SUPREME COURT OF THE UNITED STATES.

No. ~~245.~~ 124.

THE ALLIANCE INSURANCE COMPANY, THE TRITON INSURANCE COMPANY, AND THE NEPTUNE INSURANCE COMPANY, LIBELLANTS AND APPELLANTS,

vs.

THE BRIG "MORNING LIGHT," HER TACKLE AND APPAREL, WILLIAM H. SMITH AND AL., CLAIMANTS, AND ELDRIDGE HUFF.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

[L. S.] I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twelfth day of February, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

KENNETH G. WHITE, *Clerk.*

2 At a stated term of the district court of the United States of America for the southern district of New York, held in the city hall in the city of New York, on Saturday, the ninth day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel R. Betts, district judge.

THE ALLIANCE INSURANCE COMPANY AND OTHERS
vs.
THE BRIG MORNING LIGHT her tackle, &c. } Vol. 13, page 164.

1855, December 5th.—The libellants file their libel in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The libel and complaint of the Alliance Insurance Company, and Triton Insurance Company, and Neptune Insurance Company, against the brig Morning Light, her tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That, as the libellants are informed and believe, on or about the sixth day of August, 1855, the brig Jeremiah Fowler, bound on a voyage to the port of Boston, from the port of Philadelphia, laden with coal, arrived in Block Island channel, and was beating in towards the Vineyard sound, when
3 she was run into and afoul of by the said brig Morning Light, and almost instantly sunk, and was totally lost, together with her cargo on board.

Second. That the said collision was caused by the negligence, mismanagement, and want of care and skill of those on board, and in charge of the said brig Morning Light, and not by any want of care, precaution, skill, or good management of those on board, and in charge of the said brig Jeremiah Fowler, who did all in their power to avoid said collision.

Third. That the said brig Jeremiah Fowler was insured by the libellants in the respective sums following, to wit: by the Neptune Insurance Company, five thousand dollars; by the Triton Insurance Company, four thousand dollars; by the Alliance Insurance Company, four thousand dollars; and was valued in said policies at the sum of thirteen thousand dollars, and the said libellants have paid the said sums which they insured as aforesaid, and are therefore entitled to recover the same of the said brig Morning Light.

Fourth. That since the said collision, the said brig Morning Light has endeavored to avoid service of process, and the libellants have been unable to

find her until to-day, when, by accident, they learned that she is within this district, and about to leave the port. That all and singular the premises are true, and within the jurisdiction of this honorable court.

Fifth. Wherefore, the libellant prays that process may issue against the said brig Morning Light, her tackle, apparel, &c., and that all persons having, or pretending to have, any interest therein may be cited to appear and answer upon oath all and singular the matters herein propounded, and that this
4 honorable court would be pleased to condemn the said vessel to be sold to pay the amount of the libellants' claim, with interest and costs.

EDW. MOSES,
Ag't for Libellants.

Sworn to before me this 5th day of December, 1855.

JOSEPH BRIDGHAM,
U. S. Commissioner.

BENEDICT, SCOVILLE & BENEDICT, *Proctors.*
E. C. BENEDICT, *Advocate.*

Endorsed: 13, 164. U. S. district court. The Alliance Insurance Company and others *vs.* The brig Morning Light, her tackle, &c. Copy libel. Benedict, Scoville & Benedict, libt's proctors.

Filed 5th Dec. 1855.

5 District court of the United States for the southern district of New York.

Filed the fifth day of December, 1855.

Stipulation for libellants' costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-five, by the Alliance Insurance Company and others against the brig Morning Light, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said brig, her tackle, &c., may be condemned and sold to pay the demands of the libellants, and the said libellants and Alexander McDougall and Edward Moses, sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the appellate court.

ALLIANCE INSURANCE CO.,
By EDWARD MOSES, *Ag't.*
EDWARD MOSES.
ALEX'R McDOUGALL.

Taken and acknowledged this 5th day of December, 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Alexander McDougall and Edward Moses, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDW'D MOSES.
ALEX. McDOUGALL.

Sworn to this fifth day of December 1855, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the fifth day of December, 1855.

G. F. B. *Clerk.*

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-five, by the Alliance Insurance Company and others against the brig Morning Light, her tackle, &c., (libel for damages by collision $13,000,) for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said brig or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said brig or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are, therefore, hereby commanded to attach the said brig or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the twenty-fifth day of December inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this fifth day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the eightieth.

GEO. F. BETTS, *Clerk.*

BENEDICT, SCOVILLE & BENEDICT,
Proctors for Libellants.

7 In obedience to the within monition I attached the vessel therein described, on the 5th day of December, 1855, and have given due notice to all persons claiming the same that this court will, on the 25th day of December inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

AB. T. HILLYER,
U. S. Marshal.

Dated Dec. 25, 1855.

Monition ret'ble 25 Dec., 1855.

BENEDICT, SCOVILLE & BENEDICT,
Proctors for Libellants.

Filed Dec. 26, 1855.

I hereby depute Benjamin F. Ryer to execute the within process.
Dated December 5th, 1855.

AB. T. HILLYER,
U. S. Marshal.

8 District court of the United States for the southern district of New York.

Filed the thirteenth day of December, 1855.

Stipulation entered into, pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-five, by the Alliance Insurance Company and others against the brig Morning Light, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said brig, her tackle, &c., may be condemned and sold to pay the demands of the libellant, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by William H. Smith and others:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

WM. H. SMITH.
CHAS. C. DUNCAN.
J. W. ELWELL.

Taken and acknowledged this 13th day of December, 1855, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles C. Duncan and James W. Elwell, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

CHAS. C. DUNCAN.
JAS. W. ELWELL.

Sworn to this 13th day of December, 1855, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the thirteenth day of December, 1855.

G. F. BETTS,
Clerk.

9 District court of the United States for the southern district of New York.—In admiralty.

Filed the 13th day of December, 1855.

Stipulation entered into, pursuant to the rules and practice of this court.

Whereas a libel was filed on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-five, by the Alliance Insurance Company and others against the brig Morning Light, her tackle, &c., for the reasons and causes in said libel mentioned; and whereas the said brig, her tackle, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and the said brig has been appraised at the value of nine thousand seven hundred and fifty dollars, as appears from the report of the appraisers now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Beebe & Donohue, esquires, proctors for the claimants of said brig, her tackle, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

WM. H. SMITH.
CHAS. C. DUNCAN.
JAS. W. ELWELL.

Taken and acknowledged this 22d day of December, 1855, before me.

GEO. W. MORTON,
U. S. Com.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles C. Duncan and James W. Elwell, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

CHAS. H. DUNCAN.
JAS. W. ELWELL.

Sworn to this 22d day of December, 1855, before me.

GEO. W. MORTON,
U. S. Com.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the thirteenth day of December, 1855.

GEO F. BETTS, *Clerk.*

10 Whereupon, at a stated term of the district court of the United States of America for the southern district of New York, held at the city hall in the city of New York, on Saturday, the 22d day of December, in the year of our Lord one thousand eight hundred and fifty-five.

Present: The honorable Samuel R. Betts, district judge.

THE BRIG MORNING LIGHT
asm.
THE ALLIANCE MUTUAL INSURANGE COMPANY. } Vol. 13, page 164.

The claimants having executed a new stipulation in the sum of nine thousand seven hundred and fifty dollars, and the sureties being satisfactory to the proctors for the libellants, on motion of Messrs. Beebe and Donohue, proctors for the claimants, it is ordered that the vessel be discharged from custody.

11 Filed the 24th day of December, 1855.

12 Whereupon, at a stated term of the district court of the United States of America, for the southern district of New York, held at the city hall in the city of New York, on Thursday, the 13th day of December, in the year of our Lord one thousand eight hundred and fifty-five.

Present: The honorable Samuel R. Betts, district judge.

THE BRIG MORNING LIGHT, her tackle, and WILLIAM H. SMITH *et al.*, claimants,
asm.
THE ALLIANCE INSURANCE COMPANY and others.

And now William H. Smith, intervening for the interest of himself and others, owners of the brig Morning Light, appears before the honorable court and makes claim to the said brig Morning Light, as the same are attached by the marshal under process of this court, at the instance of the Alliance Insurance Company, and the said William H. Smith avers that he was in possession of the said brig Morning Light at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said vessel, her tackle, &c., and that no other person is the owner thereof, and the said William H. Smith the true and lawful bailee thereof, as aforesaid, wherefore he prays to defend accordingly.

WILLIAM H. SMITH,
BEEBE & DONOHUE,
Proctors for Claimants.

Sworn to and subscribed this 13th day of December, A. D. 1855, before me.
GEORGE F. BETTS,
United States Commissioner.

13 Filed the thirteenth day of December, 1855.

14 Whereupon, at a stated term of the district court of the United States of America for the southern district of New York, held at the city hall in the city of New York, on Wednesday, the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and

Present: The honorable Nathan K. Hall, district judge.

THE ALLIANCE INSURANCE COMPANY *et al.*
vs.
THE BRIG MORNING LIGHT, her tackle, &c. } Vol. 13, page 164.

The marshal returns on the monition issued in the above-entitled cause that he had attached the brig Morning Light, her tackle, &c. No notice given. On motion of Messrs. Beebe & Donohue, it is ordered that the claimants have ten days to file and perfect. And on motion of Messrs. Benedict, Burr & Benedict, it is ordered that notice be published until the eighth day of January, 1856.

15 Filed the twenty-sixth day of December, 1855.

16 Whereupon, at a stated term of the district court of the United States of America for the southern district of New York, held at the city hall in the city of New York, on Wednesday, the second day of January, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The honorable Samuel R. Betts, district judge.

THE ALLIANCE INSURANCE COMPANY and others
vs.
THE BRIG MORNING LIGHT, her tackle, &c.
} Vol. 13, page 164.

The marshal returns on the order of short publication made in this cause that he had advertised for all parties to intervene till the 1st January. On motion of Messrs. Benedict, Burr & Benedict, libell'ts' proctors, it is ordered that the libellants have one week to file and perfect an amended libel; and on motion of Messrs. Beebe & Donohue, it is further ordered that the claimants have ten day after to file and perfect their amended answer.

17 Filed the second day of January, 1856.

18 Whereupon, on the 11th day of January, 1856, the libellants file their "amended libel," in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of the Alliance Insurance Company, the Triton Insurance Company, and the Neptune Insurance Company, against the brig Morning Light, her tackle, apparel and furniture, and against Eldridge Huff, her master, in a cause of collision, civil and maritime, alleges as follows:

First. That the libellants are respectively, and were at the time hereinafter mentioned, corporations duly incorporated under and by virtue of the laws of the State of Massachusetts.

Second. That the libellants, in the year 1854, by policies of insurance in the usual form, duly insured the brig Jeremiah Fowler against the usual perils, in the following respective amounts, to wit: the Alliance Insurance Company in the sum of four thousand dollars, the Triton Insurance Company in the sum of four thousand dollars, and the Neptune Insurance Company in the sum of five thousand dollars, in all which policies the said brig was valued at the sum of thirteen thousand dollars.

19 Third. That thereafter, and on or about the sixth day of August, 1855, the said Brig Jeremiah Fowler was beating up the Vineyard sound, close hauled on the starboard tack, with the wind northeast; that she was well manned and equipped and had a good lookout properly stationed, and the night being somewhat dark had a bright light hung in a conspicuous place. That about four o'clock in the morning all hands were called on deck and preparations made to tack; that while about tacking, and when not under headway, the said brig Morning Light, coming at full speed, struck the brig Jerry Fowler a violent blow on the starboard side and sunk her instantly.

Fourth. That a careful watch was kept on the brig Jerry Fowler, and the Morning Light was seen at the earliest possible moment, and was hailed when she had time to, and could have and ought to have avoided the brig Jerry Fowler, but no attention was paid to such hail, nor the speed of the said Morning Light slacked, nor her course changed, nor any efforts made to avoid the collision on the part of the Morning Light.

Fifth. That all that could be done by the brig Jerry Fowler was done to avoid said accident, and the same was not caused by any fault on her part, but was caused by the fault of those on board the said Morning Light, in that, among other things, they did not keep a proper lookout, and did not in time change

their course, and did not keep out of the way of said brig Jerry Fowler,
20 as under the circumstances they were bound to do, and in that she was not properly manned.

Sixth. That by reason of the said collision the said brig Jeremiah Fowler was wholly lost, and these libellants became accordingly responsible upon their aforesaid policies for the value of said vessel, to wit: for the sum of thirteen thousand dollars, which sum these libellants have duly paid, and they are now, by reason of the premises, entitled to demand of the said brig Morning Light and her said master the said sum, with interest from the eleventh day of October, 1855.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form of law may issue against the said brig Morning Light, her tackle, apparel and furniture, and against the said Eldridge Huff, her master, and that all persons having or pretending to have any right, title or interest in the said brig, and also the said master, may be cited to appearbefore this honorable court and answer all and singular the matters hereinbefore stated.

And that this honorable court would be pleased to pronounce for the
21 damages aforesaid, and condemn the said vessel therefor, with costs to be taxed.

BENEDICT, SCOVILLE & BENEDICT,
Libellants' Proctors.

E. C. BENEDICT, *Advocate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles L. Benedict, being duly sworn, says: he is one of the proctors for the libellants, and that said libellants are out of said district, and that the foregoing libel is true to deponent's best knowledge, information and belief.

CHARLES L. BENEDICT.

Endorsed: 13, 164, United States district court. The Alliance Insurance Company and others *vs.* The Brig Morning Light, her tackle, &c. Amend'd libel. Benedict, Scoville & Benedict, lib'l'ts' proctors, 74 Wall street, N. Y.
Filed January 11, 1856.

22 Whereupon, on the 3d day of April, 1857, the respondents file their "answer," in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of the owners of the brig Morning Light to the libel and complaint of the Alliance Insurance Company, the Triton Insurance Company, and the Neptune Insurance Company, against the said brig Morning Light, her tackle, apparel, and furniture, in a cause of collision, civil and maritime. And now the ——— intervening for their interest in said brig, and for answer to said libel and complaint, answer and articulately propound as follows:

First. These respondents answering, state that as to the matters set forth and contained in the first and second articles of said libel they have no sufficient information whereon to found a belief, and therefore deny the same. And these respondents submit that even should the said matters therein contained be true, that this suit cannot be maintained by the libellants, and they pray the
23 same benefit and advantage as if they had especially excepted thereto.

Second. That these respondents deny each and every allegation of the said libel, except as herein admitted or modified.

Third. These respondents allege that on or about the sixth day of August, 1855, the said brig Morning Light was bound on a voyage from Philadelphia to Portland, being tight, staunch, and well and sufficiently manned, tackled, and provided; that at about the hour of —— of the morning of the said day, the wind at the time being from the eastward, and the said brig heading about north by east, on her starboard tack, being close hauled and beating into Block Island channel, the lookout discovered a vessel close by them, and apparently crossing ahead of their bows; that the lookout immediately gave the order to the man at the wheel to hard up his helm, which was instantly obeyed, and the said vessel, which subsequently turned out to be the Jeremiah Fowler, was at once hailed; and that at the time of the discovery of said vessel by the lookout the distance between the said vessels was too small to prevent collision unless positive efforts were made by both vessels to avoid such collision, and there being no corresponding effort on the part of those on board the said brig Jeremiah Fowler, the said vessels inevitably came together.

24 Fourth. That at the time of said collision, and for a long time previous, there was a dense fog, and it was raining heavily, and it was intensely dark; that the said brig Morning Light had an experienced and competent lookout stationed forward, whose whole service was centered in that duty; that she had a clear and bright light at her forestay, kept well trimmed; that the decks of the said brig were well and sufficiently manned; that the said brig was perceived by the lookout as soon as it was possible for human eyes to discover her, in the condition she was, and as soon as she hove out of the fog which surrounded her; and everything was done on board the said brig Morning Light that could be done, not only to avoid coming in contact with any vessels, but especially such precautions and efforts were taken and made to prevent collision with the said brig Jeremiah Fowler, and that the same did not happen from any fault or negligence of those on board the said brig Morning Light.

Fifth. That the said collision was caused solely by the negligence and unskillfulness of those on board the said brig Jeremiah Fowler, for the reasons that those on board took no precautions in running in a fog so dense, nor made efforts to avoid said collision with the said brig Morning Light when they hove in sight.

25 Sixth. These respondents deny that at the time of said collision the said brig Jeremiah Fowler was in the act of tacking, or had but just tacked and was without headway, or that her whole crew was on deck for that purpose, but, on the contrary, these respondents allege that said brig was under way, and that there was no one on her deck but the man at the wheel. These respondents deny that the said brig had a lookout; on the contrary, she was without any lookout. These respondents deny that the said brig had any light, but, on the contrary, was destitute of one. These respondents deny that said brig was well and sufficiently manned or managed, but, on the contrary, through the entire night said brig had been so badly managed that she had been several times aback, and that for those, among other reasons, said collision was the result of the carelessness of those on board the brig Jeremiah Fowler.

Seventh. That all and singular the premises are true, and within the jurisdiction of this court; wherefore the respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

C. DONOHUE, *Proctor for Resp'd't.*

Sworn to before me this 27th day of March, 1857.

[SEAL] O. R. STEELE, *Notary Public.*

Endorsed: 13, 164. U. S. district court. The brig Morning Light, her tackle, &c., *ads.* The Alliance Insurance Co. and others. Copy answer. Beebe, Dean & Donohue, cl'm't's proct's.

Filed April 3, 1857.

26 Whereupon, at a stated term of the district court of the United States of America for the southern district of New York, held at the city hall in the city of New York, on Friday, the fourth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel R. Betts, district judge.

THE ALLIANCE INSURANCE COMP'Y and others
vs.
THE BRIG MORNING LIGHT, her tackle, &c.,
WM. H. SMITH, claimant.
} Vol. 13, page 164.

This cause being called in its order on the calendar, ordered hearing.

Pleadings read. Action for losses on the "brig Jeremiah Fowler," insured by libellants, by means of collision of "brig Morning Light" with the said insured "brig Jeremiah Fowler."

Monday, 7 March, 1859, continued.

Lorenzo W. Lovejoy sworn: Been master of vessel since 1846;, been repeatedly through Vineyard sound since he was 14 years old; was master of Jeremiah Fowler, August 6, 1855, on voyage from Philadelphia for Boston, loaded with coal; had four men before the mast, also first and second mate and cook, all shipped in Philadelphia by the run; articles were lost with vessel; wind was from north and east, a 5 or 6 knot breeze; he was beating into the sound about 4 a. m., when collision took place; was standing northward on the starboard tack, close-hauled; it had been raining fore part of the night,
27 but was then partly cleared up and fairer, day just breaking; Gay Head light bore about south-southeast, (S.SE;) he had been on deck all night (second mate's watch, a witness) from 12 to 4; had been running four hours on his starboard tack; had run as far on that tack as he thought he ought to go; was going right into Cadde Hunt ledge, or Sow and Pigs, considered dangerous ledges; exhibit nothing but a light-boat to the westward part of them; in night time intends to keep 4 or 5 from them, and also in day time while beating in; was on the top of the house just before the collision; called all hands and gave orders to tack ship; it is generally the usage to tack ship when watches are all on deck; if there be room enough on the other tack, all hands come on deck; mate and steward's station on topgallant forecastle, in charge of headsail, second mate at lee braces, and the men at weather braces. Witness's first order was to put down the helm; that would bring head of the vessel to the wind, for purpose of bringing the vessel round just as her head came up to the wind and main boom swung over. Witness stepped to leeward, and man at helm cried out, "A vessel to leeward," and then witness saw vessel on his starboard side; thinks she was then nearly half a mile off, coming right straight at him; first saw her sails and the wake she made; she was also on her starboard tack; witness hailed her to keep off or luff, and tried to make her hear him; if they had put her wheel down he thinks they would have cleared him;
28 would have brought her head to wind; wit., in their position, could have cleared his vessel. The Morning Light made no change in her course; she struck the Jeremiah Fowler just forward of main rigging, at right angles, square head on; struck the mainmast of the J. F., and broke jib-boom right off; men on his vessel hailed the other as loud as they could; at the time the J. F. was lying yards back and head to the wind; the blow sunk the J. F.; witness jumped down and saw she was so injured that she must sink, and ordered all hands to take care of themselves, and jumped on the bows of Morning Light, and went on topgallant forecastle on board her; then saw mate there, he was just coming forward on to topgallant forecastle; did not see any other person till he got aft, when he saw the captain come out of the cabin and step up on to the after end of the house. Witness then ordered steward of J. F. to let her fore braces go, in order to let yards of Morning Light come in, to prevent their

going down with J. F. There was a light, largest kind of signal lantern, hung on the forestays of his vessel; he saw it there after he got on Morning Light; his steward called out, "The lantern is pretty nigh in the water," or to that effect; it was then burning. The Morning Light had up all her beating sails; had foresail set; she had spars on deck, her deck-load; did not see any light on her; it would have been best movement for Morning Light to have luffed; she would come up into the wind quicker than wear off; saw her seven or eight minutes or more before she struck the J. F.; witness could do nothing with his vessel, because his sails are always aback on such manœuvre,
29 and his vessel was rather drifting back. If she had time to wear round on new tack she would have come head and head with the Morning Light. Gay Head was then 10 or 12 miles off; when on his starboard tack, Cadde Hunt light bore a little off his larboard bow. The usage in a roadstead is, when two vessels are on same tack, following each other, for hind one to take care of leading one, and if that tacks to do so also, or keep out of her way; that is general nautical usage. Had conversations with persons on Morning Light that morning; with captain, mate, and one man about the circumstances of collision; after witness went aft on the Morning Light, wit. asked mate if they were all dead, and where light was; he said light was out; he was greatly flustered, and witness can hardly repeat what he said; witness inquired where his light was; he said it was in the galley; wit. asked helmsman why he did not luff, or keep away, or do something to help; he answered he had no orders to keep off; he was wet and half asleep, and did not see them until he heard them, then he looked under his boom, and it was then too late, and he let his vessel go. Was two or three days on Morning L. after collision, going round to Portland. She was manned with complement of men; the captain was sick; said and appeared so; second mate said he was sick, and appeared so; men were tardy in turning out to duty; first and second mate not competent to their places; first mate might have been once, but was spoil'd by going master one trip; second mate never was. She was left without
30 officers on deck on one occasion going into Portland harbor.

Cross examined.

Been master of this vessel about six weeks; had not been below to turn in or lay down from before dark that night; Morning Light lay to an hour or two after collision; does not know exact point J. F. was running when she tacked, (enumerated sails he had set when he tacked;) order to swing his yards had not been given when collision occurred; was about giving them; was then heading about SE.; does not know bearing of Catte Hunt light from Gay Head light, east end of Block island SW. by W., or about that from Gay Head light; not been there recently; may be southerly and westerly; not been through there within four years. Probably 10 to 15 minutes after collision when his vessel went down; witness did not board her again; second mate and one man jumped back, and came back as quick as possible in boat of his brig; saw Gay Head light 15 to 20 minutes before called the watch, bearing S.SE., or about that, 10 or 12 miles off.

Deposition of Joseph Snyder read, (see page —.)

Evidence for defence.

Charles H. Freeman's dep'n read, (see page —.)

Wilmot Jackson sworn: 37 years old; been 12 years at sea before mast; was on board brig Morning Light; joined her in June and left her in
31 August; was on her at time of collision as seaman; his watch began at 12 o'clock; was on lookout with first mate; had a light on her forestay, hanging about eight feet above main deck; it was a large white light in a globe

lantern, and was burning at time of collision; witness saw it; the night was dark and foggy, very thick; could possibly see a vessel one and a half her length, but at times could not see so far; could not distinguish a man on his own vessel more than 15 to 20 feet; directly before the collision he was standing 8 to 10 feet before mainmast, looking out for vessels to leeward; generally do so in thick weather, going into a roadstead; mate was on starboard side forward, standing on deck-load at break of forecastle deck, looking out forward, about level with the main rail, rather higher than topgallant forecastle; spars ran close up to rails; witness stood there about two minutes before the collision; prior to that stood forward on lookout with first mate; before that was aft 4 minutes, pumping, and looked at time, and saw it was about 4 a. m.; then returned forward to mate; wind then about E. by N.; brig was close-hauled on starboard tack, N. by E.; weather then very thick, foggy, and raining; no appearance of daylight; could not then see a vessel the length of her off; his attention first called by mate singing out, "Hard up the wheel;" witness attempted to go forward, when mate ordered to let go fore sheet, and then witness caught glimpse of other vessel; witness let sheet go; that was but an instant; then other brig lay square under his bows; saw her directly,
32 not half her length off; her sails were back; might have counted one or two hundred before they came together; thinks wheel was changed, as Morning L. fell off a little; heard no hail from other brig; don't recollect hearing her hailed from Morning L.; witness let go the lee fore braces before they struck; might take five seconds to do it; they are ten feet from the fore braces, further forward; witness passed from one to the other as quick as he could run; no time to do anything more; vessels came together immediately after he did that; nothing could have been done to prevent collision by Morning Light; had seen a brig like J. F. before dark; supposes it her; she was about 1½ or 2 points on their weather bow, 5 to 7 miles off ahead, running on same tack with his vessel; that was between 4 and 6 o'clock; he did not appear to gain on her whilst she continued in sight; thinks she was fastest sailer; she appeared under full sail; Morning Light was between Gay Head and Block island, beating into Vineyard, at time of collision; saw a number of men coming from J. F. on to bow of M. L. after collision; does not know who they were; could not distinguish persons because of thickness and darkness; backed off in twenty to twenty-five minutes; arrived in Portland 3 or 4 days after; George Forster was at their wheel; seemed to be an able seaman; thinks he was 40 years old; crew seemed to be all able seamen, and did their duty satisfactorily, and were competent to their business; Freeman was capable of taking charge of vessel; so of second mate, though he was a young man; heard conversation with Joseph
33 Post after he came on board; said he was at wheel; he said their watch was called after 4 o'clock and tacked ship, and second mate's watch went below and turned in, and first mate went below and put on his overclothes and captain went below and lighted his pipe, and he relieved his watch-mate from wheel to enable the other to put his clothes on, and he (Post) let vessel get back way; as the deck officer was not on deck, he did not care. The crew of J. F. were very unruly on the Morning Light; did not conduct themselves as becomes any crew.

Cross-examined.

Tuesday, March 8, continued.

The mate of Morning Light was standing on starboard side abaft of mainmast, looking out. Witness stood on larboard side forward of mainmast near rail, and witness jumped forward to see what was matter, when he heard mate call out to man to put his wheel hard up, then mate ordered to let go mainsheet, which witness ran back to do; was on the deck-load; did not see mate at that

moment, but did just after on forecastle; the weather was so thick could only see a man a few feet off; had not seen him for five minutes; was then alongside of him, and went from him back to pumps abaft of mainmast; tried the pumps for not over three minutes; then went 'baft to binnacle on quarter deck; looked at watch to see if time was out, (4 o'clock,) then returned forward to mainmast and stayed there a moment, when mate ordered helmsman to put his
34 wheel hard up; witness then went to lee braces which were aft by main-chains; did not see mate; it was too thick to discover him, and collision took place instantly before he saw mate. Witness did not see Jeremiah Fowler till she was right under bows of Morning Light; had not then struck, but was not her length off; saw her headsails first; he thought something was the matter when he heard order of mate; first glimpse of her sails, when mate ordered to let foresheet go, then not more than her length (110 to 115 feet) distant; did not see her hull till she struck. After mate ordered to let go lee braces, which he did, he ordered to call all hands. Witness did call them; was standing aft of lee braces; they came on deck pretty quick; cannot say whether it was before collision. The mate was officer of the deck that watch; supposed all hands were called to help back the yards to get off from collision. The mate did not help him work pump that night; heavy shock when vessels came together; had no conversation with man who relieved him at wheel 2 a. m. as to course of vessel, &c.; did not throw log; thinks was going about five knots; judges from previous days run in like weather.

John F. Palmer sworn: Native of Maine; is 24 years old; was second mate on Morning Light; joined her May, 1855; left her at Portland; had held that place on the trip before, and was an able seaman; night of collision was very thick, dark and rainy; watch from 8 to 12; wind was E. by N his watch, and brig lay about N. by E.; was lying so at time of collision; was going
35 into Block Island channel at time; did not see Gay Head light or any other one; wakened by collision; came up on deck at about main hatches; the Jeremiah Fowler was then under his bows; the two vessels together; it rained then, with thick fog, and very dark; could hardly distinguish the vessel's sails from forward; Morning Light had a light forward on forestays, which he saw when she backed off; did not see it when he first came up, as he did not go forward; supposes they lay to after backing apart for half an hour or so; no daylight then discernable; his watch commenced at 4 a. m.; he remained on deck after he came up; fog or rain did not let up before daylight; cannot say whether it then cleared up; did not notice what sails J. F. had on; her sails were aback when Morning Light backed off from her; had conversation with her second mate that morning on forward part of quarter deck; he said crew were shipped for the run at Philadelphia, and were a saucy, bad set of fellows, and they could not do much with them; he had gone below to turn in at time of collision; mate was putting on oil-clothes below, and captain was below lighting his pipe, and that second mate went below after the talk, and witness followed and heard captain tell second mate to keep quiet, "A still tongue made a wise head;" crew of Morning Light were good men and able seamen; first mate was able man and crew under good discipline, and very prompt to obey orders; captain was around deck attending to his business all the time; does not recollect his being sick; witness was not sick; attended to his business; captain got on deck first after collision; crew of Jeremiah
36 Fowler were a rough set of men; could not help at all on the Morning Light; heard some of them say if money was not given them they would blow them to insurance companies; suppose meant their own captains or owners. George Foster was at wheel of Morning Light; said he came from Portland; has not seen him since; main boom of hermaphrodite brigs extends beyond stern, fore part swings six inches above house, and after part 12 to 18 inches.

Cross-examined.

This was his first voyage in Morning Light from Boston to Pictou, and thence to Philadelphia and back to Portland; is brother-in-law of captain; did not hear all hands called; captain got on deck before witness saw him start from gangway as witness got out of his own berth; did not speak to him; went from main gangway forward to topgallant forecastle; he saw crew of Jeremiah Fowler forward; did not know them; can't say if he saw any one on topgallant forecastle; crew of Morning Light slept in forecastle, forward part of after house, doors open on main deck right by aft pump; came out directly by the wheel; Morning Light had her jib-boom carried away and her stern was canted to starboard; repaired damage before starting; she leaked some but did not repair that before getting under way, nor do anything whilst lying to, except to clear up ends, bows, &c.

Eldridge Hough sworn: (Claimants except to competency of witness because he is a party to the record, but no record is produced proving him such party.)

37 *Cross-examined as to his interest.*

He was formerly interested in the vessel Morning Light; bought a right, one-eighth of her, of Joshua Winslow, in 1854.

Direct.

Has no interest in her now or in this suit; sold his interest to William H. Smith about three years ago at time she was arrested here; it was after the collision; he received $1,500 paid to him; no interest in this suit: Smith was previous owner; has commanded her since, but not all the time; sailed her for about two years after; Winslow Smith and quite a number of others part owners; Smith paid witness by instalments; gave his note; he was responsible man. (Objected to as incompetent, overruled, and excepted to.) Was master of brig at time of collision; had then been in command about six months; she was 269 tonnage; full crew; load of spars on deck; went up to topgallant forecastle, and piled up as high, and spread two feet each side of windlass across deck; had a very good crew and very good discipline; prompt in performing orders; witness was well enough to stand his watch regularly; had not been well in Philadelphia; had seen Jeremiah Fowler near sundown, as he supposes from her description, ahead from six to eight miles; looked at with spy-glass on same course and tack with witness, heading N.NE.; had view of her some time in dog watch, about two hours; does not think he gained on her; on contrary, lost way. At sundown Block island bore W.SW. southerly three or four
38 miles off; weather changed about ten p. m.; clouded up before, but began storming then; when began raining was very thick, foggy and raining; witness went below soon after 12 o'clock; does not know what tack was on, close-hauled it was E. by N.; she would run on starboard tack six points; that would bring her north by east, and was so heading about time of collision; weather was then thick, heavy, rainy, and dark; also fog; perceived no light in sky; was roused by hearing mate call out to man at wheel to put it hard up, and answer of helmsman, "hard up;" saw it was so when he came on deck; it was first thing he looked at; then turned round and saw something under his bow, and was thrown back by collision nearly into gangway; striking of vessels was instant on his looking forward; could not see the object distinctly, but enough to notice something with sails right under him; was under starboard tack; backed his yards to get off after clearing her; lay then about one-half hour; other vessel was braced up with starboard braces when he came forward;

that would bring him on his larboard tack; (describes manœuvre of coming about on larboard tack;) could not see a vessel more than twice her length off when he came on deck, and lying as J. F. then was, laying with her head sails aback, there was no possibility of avoiding collision with her; best way to avoid it would be to put helm hard up; lay there till daylight; could not have drifted much; then Gay Head bore about E.NE. by compass 12 miles distance,
39 and Cuttle House lay about NE.

(Points out on chart positions of vessels in moving by Captain Lovejoy's description and witnesses' observations.)

The collision actually took place 40 miles S. westerly from point Captain Lovejoy supposes it to have been. Witness had some conversation with Captain Lovejoy next morning on house of Morning Light; he said he had been rather unfortunate; he could not have placed his vessel better to be run over if he had tried; that they had not tacked ship during the night, except when their ship got aback, and after that happened, they had hauled the yards round, and let ship go on the other tack; they then made it eight bells, hauled up foresail and tacked ship; he and mate were below, and he was reprimanding mate for standing so far into Buzzard's bay; that man at wheel had got ship back after ship had tacked, and she was in that position when they saw the Morning Light; he said he heard man at wheel sing out, and he got on deck just before collision happened. His crew did not behave well on witness's vessel, and witness spoke to Captain L. to speak to them; he said it would be no use; they were firing off India crackers; been at sea 25 years; no necessity in that weather to get sternway on her, if properly handled, or come into contact with her; could go through a whole tack and be off on her within a distance of one-half a mile between the vessels.

Tuesday, March 8, 1859.

Eldridge Hough, (continued.) Supposing wind NE., and Jerry Fowler
40 within six points of wind on starboard tack, she would head N.NW., and if she then went into stays and brings round to SE., how many points would she have off a close haul on the larboard tack?

Answer. Two points or eight points on her port tack. Knows Alden Rock, off Cape Elizabeth, just before going into Portland harbor; vessels go very near it at all times; it is a prominent object; his vessel passed it about noon going into harbor; did not tell Captain Lovejoy that he was so sick he could not get on deck; did not complain to him of his crew.

Cross-examined.

Spoke to Captain Lovejoy about witness's mate swearing too much on board; does not recollect Captain L. cautioned witness about going so near that rock (Alden;) don't remember saying to him anything about having to watch witness's crew all the while; thinks he ran near to Montauk Point, within five points, and within two or three miles of Block island. If Jeremiah Fowler passed, came heading N. by E., Chuttlebuck bearing on his larboard bow two miles off, he would be about six miles off Gay Head; it would place him SW. of Sow and Pigs light.

41 Wednesday, March 9th, (cross-examination continued.) Supposes actual collision was SW. of Chuttebunk light 9 miles, (marks spot on chart,) took bearings with compass in morning, thinks 5½ a. m.; has kept no memorandum or record of observation except in memory; Captain Lovejoy assisted him in it; it was about the time of getting under way; he examined chart to ascertain depth of water, and found it 12 fathom; when he received shock of collision was standing in cabin door, and blow staggered him in towards cabin, *i. e.*, came out of cabin so as to look over top of house, and

having looked at man at wheel turned round toward port bow of his vessel, received shock, and that propelled him forward towards cabin.

When he looked forward to bow and saw J. F., thought she was about across his bow, from what seemed to him to be her sails and her mainsail from its size; saw it right ahead under lee of foresail, nearly dead ahead; stepped down into cabin from effect of jar, perhaps six feet into cabin, turned and caught his hat in a chair on starboard side; cannot say whether he put on his overcoat; came on deck and started immediately forward; can't say on which side of deck, nearly to foremast; went on the deck-load, not to end of it; did not notice any person; saw two vessels in contact, but did not see exact points of contact; supposes Morning Light was head against amidship; witness gave orders to back the yards; can't say at what moment, nor to what man, but yards soon swung; could not distinguish one man from another unless close by him; don't recollect noticing any person on deck when he first came up, except
42 helmsman; did not look for any one after he had given orders. Witness observed J. F. was hard up with starboard braces, judged so by the bearing of sails and hull; could not see her braces, but cannot say at what time he observed that; thinks he was forward of main braces at time, and that he had ordered his yards backed and they were hauled in, and the two vessels were separated about 50 feet.

Witness sold vessel after collision and thinks a day or two after her arrest.

Don't recollect seeing any of crew of Fowler, whilst vessels were so separated; told Captain Lovejoy he had not been well, but stood his watch; does not know where any of his crew now are except Jackson, who has been examined on this trial

Redirect.

His vessel leaked about 30 strokes before collision, not more in smooth water, and did not increase after collision.

Charles J. Perkins sworn: Been shipmaster fourteen years, also served all the lower grades, schooners, brigs, &c. When two vessels are close-hauled on same tack and running same course, the head vessel also must see that she has room, or if compelled by necessity to tack she must give signal to one following, that one ahead intends changing her course; a hermaphrodite brig in smooth weather, loaded, will not get sternway in tacking if properly handled; a great difference in that kind of vessel in distance they will forge ahead in coming about.

43 *Cross-examined.*

Great difference in facilities of vessels in working in making a tack; a vessel tacking under lee bow of another following her, never does so without giving signal to rear one if two or three points off; if dead ahead, the leading vessel will necessarily go clear, as the other can't get up near her; both vessels so sailing are to look out for each other on making tacks, neither charged with exclusive responsibility.

Evidence for libellants.

Eleazar R. Winslow sworn: Is twenty-four years old; been ten years at sea; cook, before mast, first and second mate; was second mate of Jeremiah Fowler at time of collision; was on deck from 12 to 4 a. m., in whole watch, as was captain, except that witness was down below two or three times to get the time; does not know names of men, they were good men to work; witness had no difficulty in keeping them at work; a proper man was stationed on topgallant forecastle, that was proper station; saw him th re ten minutes before 4 a. m., all men were then on deck to tack ship and change watch; took eight to ten minutes to tack her complete; all hands got on deck and to their stations at call,

and all hands got to their stations before order "hard lee;" mate raised the jib sheets, three men to weather fore braces, witness at lee braces and captain on top of house; vessel came up into wind, then man at wheel sung out, a sail to windward, rather on quarter; witness then run from leeward to starboard side and looked out and saw vessel coming right on beam half a mile off; then
44 went forward to aft main house, when she struck them almost instantaneously; she was hailed loud from before and aft, "hard up;" witness could see her plain, her sails and hull; Fowler was then lying dead in water; it would require three or four minutes to fill away on her, so as to get any headway on her. If other vessel at that distance had put her wheel hard down and raised main sheets or put helm hard up, and let sails run, she would have come right up; she would have luffed sooner than can keep off; did not withdraw his eyes half a minute from her till she struck; stood between forward house and main hatch, on port side, till she struck; she did not change her course at all; did not see any person on board her till he jumped on board her, then found Captain Lovejoy and some of his crew on board of her, on her forecastle; did not see any other persons there; then went back to his own vessel to prepare his boat, and found mate and one man also there; mate and one man got into boat with chest and some articles, and pulled away from J. F. for M. L. When J. F. went down, she was twice her length from him in the boat, and the Morning Light was still further off. Witness saw hull of J. F. distinctly when she sunk; saw a light on J. F. ten or fifteen minutes before watch was called, did not see it after the collision; saw none on the Morning Light; should have seen it, if one was there; Morning Light had her foresail set at time of collision; latter vessel had her foresail close down to her deck-load, and six or eight inches above rail, and when set, run anglingly across the topgallant forecastle from one side of vessel to the other; a man
45 standing at foremast on Morning Light could not see J. F. forward without looking under bottom of foresail. That is not a proper place for a lookout. He could not see ahead, nor to leeward, except right across vessel. Lookout on J. F. was forward of that foresail. Standing in cabin door of Morning Light a man could see to leeward, and also forward, under the foresail, directly ahead, if standing low in the house. Has not seen any of his crew since they got in. First saw Capt. Lovejoy last Friday, in New York. Witness never had the conversation with Jackson which he states, nor are the particular facts stated by him true. The captain and mate were not below, but were on deck at time of collision. When two vessels are running on same tack, close-hauled, the rule of navigation is for rear vessel to take care when first one tacks to take care not to get foul of her. Been repeatedly into that passage, and saw the lights that night; was sailing by the wind, and not by the lights. Not accustomed to make place on chart. Noticed Sow and Pigs ½ to ¼ of a point on lee bow of vessel when the order was given to "hard lee." No knowledge of distance off. 15 to 20 minutes before calling watch, he saw Gay Head light off starboard side of vessel, but took no observation by compass, nor calculated distance. At 8 and 12 o'clock it was dark, foggy, and raining; and at one o'clock fog cleared away, rain continued to 3 or 4 a. m. When he called watch for 4 a. m. could see a good distance on water—three quarters of a mile he supposes—could not fix distance, but a good way off. Mate of Morning Light told witness he was in well, pumping ship, when collision took place; one man with him, and another at the wheel. This
46 was said next morning.

Cross-examined.

Witness signed protest and swore to it. It was read to him. Did not make statements from which it was drawn up. Did not write his signature to pro-

test; raised his hand and took the oath. Witness put his lookout at 2 o'clock. Heard no order on J. F. after that of "hard a-lee," until collision; but men forward and aft were singing out to the approaching vessel. When order "hard a-lee" was given, the men were all at their stations. When he saw M. L. was confident must be a collision unless she got out of way.

Redirect.

Did not see anything amiss in conduct of his crew on M. L. They assisted in work on board, and is sure he saw one man help furl her sails when she got into Portland. Caulked M. L. that morning before getting underway; did it by daylight.

William Larkin sworn: Mariner 20 years or more. Is acquainted with Vineyard sound. According to tide, current is 2 to 3 knots. Gay Head light, at that time, could have been seen 15 to 18 miles in ordinary weather. The nautical usage with close-hauled vessels in that section is for head vessel to tack without regard to the other, and the rear one must watch movements of one ahead and govern herself accordingly. It is not proper to station a lookout in rear of a foresail set forward unless he is placed upon the lee bow, for there he has a clear view to leeward and forward with regard to the foresail; the man at wheel having a clear view to windward and forward. It is not
47 a proper moment for to let foresheet go when helm is put hard up, because that would bring her to and counteract action of wheel; and if lee braces are then let go, it would tend to bring her to. A vessel running 6 knots, close-hauled, can be brought up into the wind in twice her length. A vessel so approaching, on to 6 knots' speed, could avoid the leading vessel in running 2 or 3 times her length.

Cross-examined.

Thinks she would come to in 3 times her length without touching her sails. Would be done quicker by proper management of her sails. Something depends upon steering qualities of vessel, as carrying weather helm, &c. Could get round on opposite tack in 1¼ minutes. It is also custom for head vessels to give signal to rear one if she has any embarrassments to prevent her movements.

Redirect.

Vessel can be brought round in seventy-five seconds, but cannot get on opposite tack under several minutes, 15 or more, according to condition of vessel, weather, and other circumstances. Vessel works slower when sails are wet.

Lorenzo Lovejoy again: Tide was ebb at time of collision, running to westward. There are also tidal currents in that section from Buzzard's bay, the sound, &c. The vessel could not possibly have been where she got under way; again (2 hours) been at same point as when collision took place; believes she had drifted six miles. Does not know where his first mate is. Heard he was serving on board a man-of-war. Had served in one previous to shipping
48 with him. Habit of his vessel in tacking was to fall astern, not to forge ahead. It would require him in a dark, wet night, 45 minutes to tack his vessel so as to get everything chock away and under her course. His vessel was heavy loaded. More so than M. L. As to conversations imputed to him by Captain Hough, no recollection of saying what Capt. Hough alleges. Witness did not say he and mate were below when helmsman sung out, for he was on the house at time. Did tack at twelve o'clock, and ship must then have been aback, for he can't tack her without getting aback. Vessel in

morning was at point marked on large chart, off 5 or 6 miles westerly from place of collision. Tide was running out in that direction.

Cross-examined.

He signed and swore to protest.

Evidence for claimants.

Hough again: Tide was setting eastward, same there as at Boston. High water 4.56 a. m. Lookout stationed on his vessel starboard side. Found could see clear to jib without obstruction by foresail. Formation of his vessel was sharp off.

John F. Palmer again, second mate of Morning Light: Foresail was not in way of lookout at all as he was stationed that night.

W. Jackson again, as last witness, also: When full it did not prevent his having a clear sight under it.

Cross-examined.

Middle of that sail would be nearly to deck of vessel, but that
49 would not hinder man seeing under it. Middle of it would be raised $4\frac{1}{2}$ feet above foot rope at fastening.

James Reed sworn: Mariner; master eight years; commanded hermaphrodite brig four years; would not require more than five minutes making a clean tack and giving headway on the other tack, if ordinary vessel, smooth weather, and full load of coal.

Cross-examined.

Does not know he ever timed it by watch.

Tide-table and protest tendered in proof for to-morrow, with privilege to withdraw it then.

Thursday, March 10, continued.

(Copy of protest read. Original not produced.)

Mr. C. L. Benedict argues for the libellants.

Mr. C. Donohue argues for the claimants.

Mr. Q. W. Morton argues for the claimants.

Mr. E. C. Benedict argues in reply.

C. A. V.

50. United States district court, southern district of New York.

THE ALLIANCE INSURANCE COMPANY and others
vs.
THE BRIG MORNING LIGHT, her tackle, &c.

The deposition of Charles H. Freeman, taken *de bene esse*, on behalf of respondents, in the above-entitled action, this twenty-fifth day of March, eighteen hundred and fifty-eight, in accordance with the annexed consent.

Charles H. Freeman, being duly sworn, deposes and says, as follows:

My name is Charles H. Freeman; residence, Gardiner, in the State of Maine; age, thirty-eight years; occupation, seaman; and I intend to return to Maine this afternoon if I can get away. I have followed the seas twenty-three years; have been master and first officer for some fifteen years; was master of the schooner Coral, of Pittston; of the schooner Friendship, of Gardiner, Maine; of the schooner Midas, of Pittston, Maine; of the brig Coral, of Bath, Maine; of the

brig Thosa, of Bath; I was first officer of the Morning Light from the second day of June, 1855, to the eighth day of January, 1856.

The brig Morning Light started from Philadelphia on the twenty-eighth day of July, 1855, loaded with lumber, and bound for Portland, Maine;
51 she had on board eight hands, all told, consisting of the master, mate, second mate, cook, and four men before the mast. That was a full complement of men for her; she was of about 270 tons, a little short; she had a deck load of three tiers of spars, coming up just about level with the bulwarks. A collision occurred between the Morning Light and another vessel on the morning of August the sixth, about four o'clock in the morning, just before eight bells; we were at the time in Block Island channel, bound into the Vineyard sound; were beating in. We had at that time the starboard tacks aboard; it was in the first mate's or larboard watch; that is my watch; George Foster, an able-bodied seaman and good sailor, was at the wheel; Wilmot Jackson was about the deck, and Jackson and myself were both on the lookout at and just before the collision. I was standing forward on the deck-load on the starboard side, just by the foremast. I had for a light a signal lantern on the forestay, about eight or ten feet above the main deck; it was a large globe lantern, giving a good white light. The weather during the night was a thick fog, and rainy. The rain came in fog showers. We were standing along on our starboard tack, going about five knots, heading about north by east, with the wind about east by north. It veered and hauled a little during the night, but at this time it was about that. I made a brig—she suddenly appeared out of the fog dead ahead of us; it might have been the length of the vessel off; it might have
52 been a little more, and it might have been a little less, I cannot tell exactly, it being thick and raining at the time. We could not see but a dreadful little distance; I can't tell how far. I couldn't see the length of the brig to distinguish anything a part of the time, it was so thick and dark. I could not see any distance. I could not see a quarter of the length of the vessel. I sung out to the man to hard up his wheel, which he did. I gave orders to back the head yards, which was done as soon as the man could get to the weather-braces to do it. I cleared away tack and fore bow-line. Jackson, I believe, cleared away the foresheet on the lee side in order to give us a chance to back her head sails. We backed the yards then as quick as we could man the braces, and brace them in or back. We were so near the vessel, that by the time I got the orders given we were into her—I mean the orders to hard up the wheel, clear away tacks and sheets, and heave the yards aback. We fell off a little and struck her just forward of the main rigging on her starboard side; we carried away our jibboom, canted our stern above water. There was no light on board of the other vessel that I saw or could see when she was under our stern; if she had a light on deck I should have seen it, but I could see none. We hove our yards back, and backed off of her; part of her crew jumped over our bows and came on board of us; the balance of the crew came on board in their boat; it was from fifteen to twenty minutes before these last got on board of us. We could not see them, it was so thick with fog and rain, till they got alongside of us. The other vessel sunk, I suppose; we backed off from
53 her, and in the dark she went out of sight. We could not distinguish any man on her deck as we backed off from her, it was so dark; it appeared when we first made the vessel that she was lying dead in the water, but I could not tell, it was so thick and dark. After the crew got on board we learned from them that the other vessel was the brig Jerry Fowler. It might have been two minutes from the time the Jerry Fowler was first seen from our vessel before the two vessels came together. I was forward on the lookout for vessels ahead of us at the time of the collision, and for some fifteen or twenty minutes before we could see her. Jackson, the other man on the lookout, was on the larboard side pretty near the mainmast abaft, looking out to the leeward.

Neither the moon nor the stars could be seen at all during my watch. The fog was thick on the water, and it was dark, so that I could not discover a vessel at any distance. Jackson called the other watch as soon as we made the other vessel, as he was near the house. They did not get on deck before the collision; possibly one or two of them might, but there was not time for them to get on deck. They were turned in all standing, that is, with their clothes all on. The second mate and master heard me sing out to the man at the wheel, and they started at once, and when the vessels came together, it hove the second
54 mate across the cabin and lamed him; he did'nt mind it much till a day or two afterwards. We could not have done anything more than we did do to avoid the collision; I did everything that could be done. The vessels were so near together before we could make each other out in the darkness, that we had not time to avoid the collision; it could not be done. If the other vessel had been going ahead, and had put her helm up instead of down, I think we could have passed each other without striking the hulls, but we were so near that I think we might have locked our yards, and perhaps carried them away. We put our helm to starboard so as to fall off and pass the other vessel's stern. I thought when I discovered her that she was going ahead, and the only possible chance for us to avoid her was to keep our vessel off as we did, and back the headsails, but we were so near together that even this could not prevent the collision. I don't know what was done on board the other vessel, only from what I imagine.

(Objected to by respondents.)

I heard some of the other vessel's company say they put their wheel down; Joseph Post, the man at the wheel, and a green hand, as he stated, was the only one on deck at the time; he said the officers were below, and he did not care to mind his wheel when the officer of the deck was not at his post.

(Objected to by libellant.)

He said he let the brig get aback just before the collision, and they were just coming on deck to brace the yards up on the larboard tack. He said
55 the captain was below lighting his pipe, and the mate was down getting on his oil clothes, and the second mate had gone below to turn in; Joseph Posts's watch mate went below to get his oil clothes on account of the rain.

C. H. FREEMAN.

Adjourned to March 26, 1858, at 12 m. Benedict, Burr & Benedict. D. A. Hawkins, counsel for respondent.

Examination resumed.

Question. State what was the effect upon the Morning Light of your order to hard up the wheel.

Answer. It had no effect, for we were so nigh the other vessel there was not time; the wheel could hardly have been turned before the vessels came together; the man hardly had time to put the wheel up before we struck the other brig.

Question. Had you ordered the wheel hard down immediately on the other brig's being first visible from the Morning Light, what effect would that have had?

Answer. It would have had no effect, for there was not time for the vessel to feel it; and if she had felt it, the two vessels would have each come head on to the other, or nearly so, and both would have stood a good chance to be sunk. They were so near together when we first discovered the Jerry Fowler in the darkness, the only possible chance of avoiding a collision was to try to pass the stern of the other brig.

Question. How was the other brig heading when you discovered her?

Answer. She was heading, as near as I could see, about southeast or
56 southeast by south.

Q. What sail were you under, discovering the other brig?

A. We were under all sail, with the exception of the royal and foretopmast staysail.

Q. How did you strike the other vessel?

A. Rather on an angle, or a slanting clip; we were pointing a little aft of the Jerry Fowler.

Cross-examination.

I reside in Gardiner, Maine. I am not in any vessel now; I was last in the brig Caroline, of New York. Hatwood & Hibbard owned her; I forget who did her business. I was mate of her; Samuel Stinchfield, of Augusta, Maine, was her master. The vessel I was in before that was the Morning Light. I joined her June 2d, in Boston. Eldridge Huff was master of her; he lives in Edgecomb, Maine. John Palmer, of the same place, was her second mate. Wilmot Jackson, of New York, George Foster, then of Portland, and also two other men composed the crew; one of them lived in Portland; an Indian fellow was cook. I came on deck on the night in question at twelve o'clock. Wilmot Jackson and George Foster came on deck at the same time. They completed my watch; the rest went below then, including the captain. The signal lantern had got blown out, and after I took the deck I had it lighted. I lighted it myself; I took it down from the forestay and went with it into the galley; the wind had blown it out, and I lit it in the galley. I then went on to the
57 topgallant forecastle with it, and stood there awhile with it in my hand. I was with the lookout, looking out to see if we could see anything. I stood there the biggest part of the watch. I was aft three or four times during the watch to see about trimming the sails and see how she was steering. Wilmot Jackson stood on the forecastle while I was there, but not all the time I was there. I sent him aft to pump the brig out a while before the collision; during this time George Foster was at the wheel. George Foster was at the wheel from two o'clock till four o'clock; he was at the wheel at the time of the collision. I first saw the Jerry Fowler; I was then standing forward on the deck-load by the foremast on the starboard side. When I saw her I sung out to the man at the wheel to hard up his wheel. I had been standing in that same spot a little while. It had been only a little while since I was on the topgallant forecastle; perhaps I had been there fifteen minutes. When I went there I called Jackson to go and try the pump, and he did so; and he was standing, at the time I saw the vessel, by the main rigging, on the larboard side. We had not spoke to each other after he took that position. We were the same as into her when I saw her. No one was on the deck of our vessel at this time but myself, Foster and Jackson We saw no other vessels but the Jerry Fowler that watch. The first thing I saw was the Jerry Fowler's topsails, or something that looked like a vessel's sails. I thought, when I made them, that she was a
58 vessel by the wind on the larboard tack. I did not stand in the same place till she struck; I stepped forward to the forward part of the deck-load, so that I would be forward of the mast, for I expected she would knock everything all away. I was afraid she might carry away the spars. I had sung out to the man as soon as I see the vessel and before I stepped forward; after I sung out to the man, and before I stepped forward, I gave orders to clear away the tacks and sheets. Jackson had called all hands then; when I gave the orders Jackson and Foster were on the deck then; I am not certain that any had got on deck then, but he had called them. He called them immediately after I sung out to the man at the helm. I had stepped forward at the time he called them. I cleared away the tack and bowline myself; Jackson cleared the

sheet. I can't say whether any of the other watch had got on deck when I cleared the tack. As soon as I cleared the tack, I went aft and met the captain; he was right by the forward part of the house on the starboard side. I did not see him when he came up. The vessel had struck when I met the captain and when I cleared the tack. The last time I tacked before the collision was about three o'clock. The captain is now in the Morning Light; the second mate is in Edgecomb; Jackson is to work in the navy yard in Brooklyn. I did not hail the other vessel; I heard no hails from them. As we were coming on to her we would strike her at right angles. When we struck we canted over stern to starboard, and started it off on the port side from the wood
59 ends on the larboard side; this was by the blow. The captain and two men came over our bow. I am not positive how many. I am positive the captain came, because he spoke to me as he climbed up. I think he went back. We were going about five knots, and a vessel jammed by the wind, going through the water five knots an hour, is knocking the water pretty fast. Mr. Winslow, in Bath, sent me here to be examined. He told me he would pay me what was fair and right for my trouble if I would come.

When Jackson pumped the brig no one helped him to pump, not that I know of. It don't want more than one man to try a vessel's pump. The brig leaked some—about one hundred strokes an hour, I guess. She was pumped every two hours, and had not been pumped for two hours before Jackson pumped her. Every man when he took the wheel pumped the vessel first. The wheel was changed every two hours.

C. H. FREEMAN.

Sworn to before me this 26th March, 1858.

CHARLES L. BENEDICT,
[SEAL.] *Notary Public.*

MARCH 27, 1858.

Examination continued.

No part of my deposition has been read over to me since I was last here. The last time I saw Wilmot Jackson was night before last; we took a walk to-
60 gether. I spoke about this collision with him. I only told him that I had come on to give my deposition. I looked at the compass to see how we were steering; this was the last time I was aft before the collision. I then went forward, as I told you before, to the forward part of the deck-load, and staid there till I made the rail of the Jerry Fowler. The vessel was steering by compass, when I looked, north by east; I told the man at the wheel to watch her and keep her snug to the wind. I was not aft any length of time.

Redirect.

You have stated in the cross-examination that your stern was canted. State, if you can, particularly how.

Answer. We were sailing north by east and struck the vessel a little on an angle. When we struck the vessel we cut through her side or bulwarks, or both, and by doing so we fetched up on our larboard stem and canted the stern to starboard; by striking as we did, and fetching up, the vessel by the wind naturally sags to the leeward, and that was the cause of the stern being canted to starboard and started on the port side from the wood ends.

Question. State, if you know, how big a hole you cut into the side of the vessel with your stem.

Answer. At the time I cast off the bow-line and tack I looked over the bow,

and the brig Jerry Fowler, or the brig we ran into, was then under our bow, and the men were coming on board of us. I saw a hole just forward
61 of the main rigging where we had struck. It was a pretty fair hole; we cut her rail down to the deck. The hole into the side of the vessel I calculated was something larger than a barrel.

Re-cross-examined.

I was standing on the topgallant forecastle and looked over the starboard bow of our vessel. The other vessel lay under our bow then. The captain had just come on board then. I can't tell whether the hole went below the water or not, it was so dark.

C. H. FREEMAN.

Sworn to before me March 27, 1858.
[L. S.] CHAS. L. BENEDICT, *Not. Pub.*

We consent that the above deposition be read by either party in the trial of this cause with like effect as if the same had been regularly taken before a U. S. commissioner, subject to all legal objections, without being filed, and consent of Beebe, Dean & Donohue to be added.

BENEDICT, BURR & BENEDICT,
Proctors for Lib'ts.

D. A. HAWKINS,
Advocate for Claimants.

MARCH 29, 1858.

Endorsed: U. S. district court. Alliance Insurance Co. and *al. vs.* Brig Morning Light, &c. J. A. & Co. Dep. of C. H. Freeman. Benedict, Burr & Benedict, lib'ts att'ys, 74 Wall street, New York.

62 U. S. district court.

THE ALLIANCE INSURANCE COMPANY }
vs.
THE BRIG MORNING LIGHT. }

SOUTHERN DISTRICT COURT, *ss:*

Joseph Schneider, of Maine, being duly sworn, says: I am a sea-faring man; I have followed the water about thirty-five years; I was cook of the Jerry Fowler at the time she was sunk; I am able to steer and reef top sails, and have done it on some vessels I have been on; I was called to help tack the Jerry Fowler, and came on deck; I always used to board the fore-tack on the Jerry Fowler; when I came on deck all hands were on deck and the vessel was heading to wind; the yards were aback; Captain Lovejoy was aft as I came out of the cabin; all hands were standing ready for orders. Just as I came on deck—just as I poked my head out of the doorway—the men on our vessel began to holler to a vessel to put their helm down or they would be into us; I looked and saw the vessel; she was then, as I think, as much as ten times her length off, or more; she looked like a mountain coming into us; she was heading right for us; I kept looking at her; if I went forward she appeared to be coming right for me, and if I should go aft she appeared to be coming right for me; she struck us rather the forward part of the main chains; I saw
63 no light on the other vessel; if there had been a light on her I should have seen it; I heard not a word from her; it was but a little while after I came out that she struck—not five minutes; after she struck I got up on to our rail and saw the hole she had cut, and went on to the other vessel as quick as I could; I went on to her forecastle deck and looked to see if I could see

any one; I couldn't see any one, and I went aft and let go her lee braces and her foresheet, and then went over the other side to haul in on the weather braces to back her yard, and then found myself surrounded by her crew, and one of them said, "Hallo, we have got a strange man here." As I went aft I met two men coming forward quick; one of them was the captain and the other I took to be the mate; we had a light on our vessel; it was hanging on the stay-forward; it was seven or eight feet above the bowsprit; I saw it burning; the last time I saw it was just as it was going under water, the bottom part in the water; I said to the men about me our light was gone, but I don't know as they heard me; this was as she was sinking, and I was on the other vessel; I trimmed the lamp and got it out for the mate at the time he lit it, at 9 o'clock; it was one of these large globe lanterns, the largest kind, and was well trimmed.

Being cross-examined, witness says that he hails from Lubec, Maine. I have followed the sea something like 35 years, and most always go as
64 cook; I have only been one voyage since that; it was in the Maine Law, to Rio and back to New York; we came here in May two years ago from Rio; I have been smoking herring since then for myself; I have during that time carried on the business of smoking herring at Lubec; the Jerry Fowler belonged to Lubec; Captain Lovejoy has gone to Demarara, as I understand; he is gone in a man-of-war; the second mate went last summer to England in the Pilena after ——— plaster mills, and I have not seen him since; the Jerry Fowler at the time of the collision was bound from Philadelphia to Boston, loaded with coal, not very heavily loaded—three hundred and fifty tons; had four men before the mast; I do not know their names; they were all strangers to me; they shipped by the run; I shipped in Lubec; I had previously been in her one year, and at this time had been in her about one and a half months at the time of the collision; the insurance companies sent me on here as a witness; I do not know how much they are to give me; they advanced money to me to come on here as a witness; I have never talked the case over with any of them; I never told any of them what I know about the collision; I have talked with Captain Lovejoy about the collision; it was last fall; I told him what I knew about it; I only talked with him about it only the once; I have never seen him only the once; I have never talked with any one else about
65 it; that is the only time I have talked about it with anybody; I am quite sure about it, except the agent when he came for me last fall, and he asked if I was on board at the time, and I said I was, and that was all that was said about it with him; I came away from home a week last Monday; I board in Broad street, leading up from the ferry, in a cellar; I don't know the street or number. I turned in on the night of the collision between 8 and 9; I guess it was about half-past 8; I slept in the cabin; it was a house on deck; it extended quite across the deck and the deck formed the cabin floor; I slept on the larboard side the middle state-room; I went to sleep when I turned in; I was called at twelve to tack ship; the weather was then foggy, with thick drizzly rain; I was not on deck over ten or fifteen minutes; I helped to board the fore-tack and held down the head-sheets; I went and turned in again and went to sleep; I think the tack she stood on after twelve o'clock was the larboard tack, I am not certain after I turned in; I called all hands to tack ship; I don't know how the vessel was heading; when I went below after tacking at twelve o'clock, I undressed myself; when I turned in, after twelve o'clock I heard the mate say, "Call all hands to tack ship;" all hands were called; I can't say who called them; the cabin door was opened, and a call was made in the cabin; the mate called in the cabin; he did not call in the cabin; it was the mate's watch on deck; his watch was just up when he called;
66 I only put on my Dungan trousers, and that was all; it was not over two minutes from the time he called that I came out of the cabin; I came out the forward doors; they were both open and fastened open; it was a

considerable thick when I came out, foggy and raining not very thick; I can't say which was the first man I saw when I came out of the cabin; they were all standing aft, except the mate; he was standing forward; he had been easing off the head-sheets; I saw him easing them off; I saw the jibs and staysail slamming; just as I was coming out of the doors of the cabin I saw the mate; he had the jib-sheet in his hand; I can't say how long he held it; I dont know what point of the compass our brig was heading at the time; I did not look at the compass; our vessel was in stays when I came up; she did not fall away on the other tack at the time of the collision; the crew were not aft when I came out; they were at their stations to tack ship; they were at the lee rigging, lee main rigging, close to the house; all hands were there, except the man at the helm, the captain, and mate; the captain was on the after part of the house; the wheel was aft the house on the main deck; the captain was right over the wheel, on the poop; I did not see the captain as I came out; I heard him holloa, "Brig ahoy! put your helm down or you will be into us;" he sung out that just as I put my head out of the cabin door; that was the first
67 thing I heard; as soon as I got clear of the cabin I saw the approaching vessel; I don't think it was more than a minute—it might have been two—after I saw her till the collision; it was blowing a good stiff breeze, as much as we wanted to crack to about five or six knots, not over; as I stepped out of the cabin I saw her pretty much abeam, on our starboard side; I am sure it was starboard side; the captain continued aft until the collision; he did change his position; yes, I saw him get upon the house once; it was the cabin what I have called the poop; that was the only time he changed his position; he was not off the house; the men continued at the main rigging until the collision; when I first came out I started and went forward to the fore rigging, on the starboard side; I then turned and walked aft again on the same; I walked forward and aft as many as five or six times each way before the collision; I kept my eye fixed on her all the time till she struck; I did not sing out; the mate, captain, and another forward sung out; I was just forward of the main rigging when she struck on the starboard side; no one else, that I saw, was on the starboard side, except the captain; he was on the starboard side of the house; all sail was set on our vessel; she carried mainsail, three staysails, foresail, foretop-sail, foretop-gallant sail, royal foretop-mast staysail, jib, and flying-jib. I continued walking up and down on the starboard side alone; she struck us head on, just about square on; she struck us on
68 the forward chain of the main chains; I was not frightened except before she struck; I was afraid she would run over us; I went on board of her at the head-stays; the captain and myself both went on board together; I never made any written memorandum of this collision; the collision happened three years this coming August; our second mate was at the lee main rigging; I am sure he was not below. I do not know who was at the helm; there were two men and an officer on the watch; I do not know which men were on that watch; the chief mate was forward at the time of the collision, still holding the jib-sheets in his hand; I am sure he was not below; I never said on board the Morning Light that the captain and mate were below, or either of them at the time of the collision, or words to that effect; we went to Portland in her; went on Monday, and left Thursday; our yards had not swung at the time of the collision, they were just going to swing; she was nearly or quite dead in the water; if anything going a little astern; I signed a protest in Portland before an officer; that protest was true; it was read to me before I signed it.

his
JOSEPH × SCHNIDER.
mark

Sworn to before me this 16th day of June, 1858.

CHAS. W. NEWTON, *U. S. Comm'r.*

U. D. district court.

THE ALLIANCE INS. CO.
vs.
THE BRIG MORNING LIGHT.

69 We consent that the within copy deposition be read upon the trial of this cause with like effect as if the same were an original deposition regularly taken before a U. S. commissioner. We also admit the right of the libellants to maintain the action.

BEEBE, DEAN & DONOHUE,
Proctors for Resp'd'ts.

Endorsed: U. S. district court. Alliance Insurance Co. *vs.* Brig Morning Light. Co. Dep. of J. Schnider. Benedict, Burr & Benedict, lib'ts atty's, 74 Wall st., N. Y.

70 Whereupon at a stated term of the district court of the United States of America for the southern district of New York, held at the city hall in the city of New York, on Saturday, the ninth day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel R. Betts, district judge.

THE ALLIANCE INSURANCE COMPANY and other Insurance Companies
vs.
THE BRIG MORNING LIGHT, &C.

This case having been heard on the pleadings and proofs, and also on the question of costs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel filed in this cause be dismissed, with costs to be taxed against the libellants, and it being considered by the court that the collision in the pleadings mentioned being the result of inevitable accident, each party will have to bear his own loss; and it is further ordered that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the stipulations for costs and value executed by the claimants herein be cancelled.

(S'd) SAM. R. BETTS.

71 Filed the ninth day of April, 1859.

72 Whereupon on the 19th day April, 1859, the libellants file their notice of appeal in the words and figures following, to wit:

U. S. district court.

THE ALLIANCE INSURANCE CO. *et al.*
vs.
THE BRIG MORNING LIGHT, &C.

GENTS: Please to take notice that the libellants appeal from the final decree of the district court in this cause to the next circuit court.

Dated April 19, 1859.

BENEDICT, BURR & BENEDICT,
Lib'ts' Proctors.

To BEEBE, DEAN & DONOHUE, esqs., *Cl'm'ts' Proctors.*
GEO. F. BETTS, esq., *Clerk of the U. S. District Court.*

Endorsed: 13, 164–167. U. S. district court. The Alliance Insurance Company *et al. vs.* the Brig Morning Light. Notice of appeal. Benedict, Burr & Benedict, lib'ts' proctors. To Geo. F. Betts, esq., clerk.

Filed April 19th, 1859.

U. S. circuit court.

THE ALLIANCE INSURANCE CO., &c.,
vs.
THE BRIG MORNING LIGHT, &c.

73 GENTS: Please take notice that the stipulation to be filed by the above-named appellant on the appeal made herein will be executed and given by H. H. Crocker, esq., of No. 88 Beaver street and 135 Pearl street.

And please further take notice that the aforesaid surety will attend at the office of the clerk of this court the 29th day of April instant, at 11 o'clock in the forenoon of that day, to execute said stipulation, and that he will, at the same time and place, justify as a good and sufficient surety herein.

Yours, &c.,

BENEDICT, BURR & BENEDICT,
Proctors for Appellants.

To BEEBE, DEAN & DONOHUE, *Proctors for Appellees.*

Endorsed: 13, 164. U. S. district court. The Alliance Insurance Company *et al. vs.* The brig Morning Light, her tackle, &c. Benedict, Burr & Benedict. Notice of atte'd'ce of surety. Appt's proctors.

Service of a copy of within is admitted April 25, '59.

BEEBE, DEAN & DONOHUE.

Filed 25th April, 1859.

74 Of the United States of America, for the southern district of New York, in the second circuit.

THE ALLIANCE INSURANCE COMP'Y *et al.*, libelt's & app'ts,
vs.
THE BRIG MORNING LIGHT, her tackle, &c., WILLIAM H. SMITH *et al.*, respondents and appellees.
} Bond for costs.

Know all men by these presents, that we, Edward Moses and Henry H. Crocker, are held and firmly bound unto the above-named claim'ts and respondents in the sum of two hundred and fifty dollars, to be paid to the said cla'm'ts and respondents. for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 29th day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above-named libellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York, now, therefore, the condition of this obligation is such, that if the above-named libellants shall prosecute their appeal to effect, and answer all damages and costs if they fail

to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EDWARD MOSES. [SEAL.]
Pr. JOEL B. ERHART, *Ag't.*
HENRY H. CROCKER. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 29th day of April, 1859, before me.

GEO. W. MORTON,
U. S. Commissioner.

75 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry H. Crocker, being duly sworn, doth depose and say, that he resides at 61 east 17th street, business place 88 Beaver street, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

HENRY H. CROCKER.

Sworn to this 29th day of April, A. D. 1859, before me.

GEO. W. MORTON,
U. S. Com'r.

Sufficiency of security approved.

Filed this 29th day of April, 1859.

76 Whereupon on the 30th day of April, 1859, the appellants file the appeal and service of same, in the words and figures following, to wit:

U. S. circuit court.

THE ALLIANCE INSURANCE CO. *et al.* *vs.* THE BRIG MORNING LIGHT, &c. } Affidavit of service.

CITY AND COUNTY OF NEW YORK:

Wm. W. Goodrich, of the city of New York, being duly sworn, doth depose and say, that he did, on the 30th day of April, in the year one thousand eight hundred and fifty-nine, serve the claimants' proctors with a copy of the appeal, of which the annexed is a copy, by delivering the same to a clerk in their office.

WM. W. GOODRICH.

Sworn to before me this 30th day of April, 1859.

A. C. WILMARTH,
Notary Public.

U. S. circuit court.

THE ALLIANCE MUTUAL INSURANCE COMPANY &c., *vs.* THE BRIG MORNING LIGHT, her tackle, &c.

77 The petition and appeal of the above-named libellants respectfully shows: That on or about 5th day of December, 1855, the appellants filed their libel in the district court of the United States for these southern district of New York against the said brig Morning Light, her tackle, apparel, and furniture, in a cause of collision, claiming over fifty dollars, praying, among other things, for the reasons set forth in said libel, that the said brig Morning Light, her tackle, &c., might be condemned to pay the demands of the said libellants, with costs.

That thereupon process was duly issued by said district court, and the said vessel duly seized thereunder; that thereafter, and on the 26th day of December, 1855, the said district court gave leave to the libellants to file an amended libel in place of said original libel; and accordingly, on the 10th day of January, 1856, these appellants duly filed an amended libel, in which —— ——, was made a party defendant, he being also an owner in said brig at the time of the seizure thereof, and at the time of the collision referred to.

That thereafter, and on the —— day of ——, the owners of said vessel filed an answer to said amended libel, praying that said libel be dismissed; that said cause came on to be tried before the honorable Samuel R. Betts, judge of said district court upon the said amended libel and answer thereto and the depositions and proofs of the respective parties, and the said judge, having
78 advised thereon, on or about the —— day of ——, made a final decree in said cause, whereby it was, among other things, decreed that said libel be dismissed, with costs to be taxed. And these appellants are advised and insist that the said decree is erroneous, inasmuch as the libellants were entitled to recover in said cause their damages claimed; and these appellants, for these and other reasons, appeal from the whole of said decree in favor of said owners and master, to the next circuit court to be held in the said district, and on the said appeal they intend to have the said cause heard anew upon the pleadings and proofs in the district court, and other proofs to be introduced in the circuit court, and they pray that the necessary documents and proceedings in said cause may be returned to the said circuit court, and that the said circuit court would hear the said cause anew, and that the said decree may be reversed, and that this honorable court would decree the libellants to be entitled to recover in said cause their damages with their costs to be taxed, or such other decree render as to said court shall seem just.

New York April 30, 1859.

BENEDICT, BURR & BENEDICT,
Proct. of Libellants.

Endorsed: 13,164. U.S. circuit court. Alliance Insurance Company
79 *vs.* Brig Morning Light, &c. Benedict, Burr & Benedict, lib't's atty's., 74 Wall st., N. Y. Appeal.

Filed 30th April, 1859.

Due service of a copy of the within appeal is hereby admitted.
April 29, 1859.

80 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the twentieth day of May, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE ALLIANCE INSURANCE CO., libellant and appellant,
vs.
THE MORNING LIGHT, &c., respondent and appellee.

This appeal coming on to be heard on the appeal from the decree of the dis't court, Mr. C. L. Benedict reads evidence on part of lib'l'nt from Apostles. Mr. Donohue reads evidence from Apostles on part of resp't. Protest of L. W. Lovejoy and others read. Opinion of Judge Betts read.

Mr. C. L. Benedict argues on behalf of the appellants.

Mr. Donohue on behalf of appellees.

81 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on Wednesday, the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE ALLIANCE INSURANCE COMPANY, lib'l'nt and appellant,
vs
THE MORNING LIGHT, resp'd't and appellee.

This cause being still on hearing, Mr. Donohue concludes his argument.

Mr. Morton is heard on the same side.

Mr. E. Benedict is heard in reply.

Cur. adv. vult.

82 UNITED STATES OF AMERICA,
State of Maine, Cumberland county, city of Portland:

By this public instrument of protest be it known and made manifest that on the ninth day of August, A. D. 1855, before me, Nathaniel T. During, a public notary, duly and legally appointed and qualified and residing in Portland aforesaid, come Lorenzo W. Lovejoy, late master of the brig Jere Fowler of Lubec, and duly entered his note of protest in consequence of the loss of said brig as therein stated, and now on the same day he again appears before me, the said notary, together with Peter Haverty, mate, and Elezer R. Winslow and Joseph Snyder, seamen of said brig Jere Fowler, and require of me, the said notary, to extend said protest, and the said appearers having been by me, the said notary, sworn according to law, did declare, depose, and say, that on the twenty-fifth of July last they sailed in their several capacities on board said brig Jere Fowler from Philadelphia, bound to Boston, the said brig being

83 laden with coal. That nothing material happen d until "Monday, August sixth, 1855. This day begins with pl asant weather and a good breeze from the northeast, and in Block Island channel, beating in towards the Vineyard sound; nothing of note until four o'clock: called the watch, tacked ship with our head to the southward and eastward; *thick rainy weather;* made a vessel on her starboard tack heading for us; put our wheel down and she came to the wind; we *continued* to *try* to make them *see* and *hear* us, but they continued straight on her course, not altering it, and struck us just forward of the main rigging, cutting us through; found she was sinking; part of us got aboard of the brig that struck us; some stopped to get their clothes and left in the boat. The brig went down in ten minutes after they struck. The brig which struck us proved to be the brig Morning Light, of Bath, Ellridge Huff, master."

L. W. LOVEJOY, *Master.*
PETER HAVERTY, *Mate.*
E. P. WINSLOW, *Seaman.*
his
JOSEPH × SNYDER, *Seaman.*
mark.

84 And the said appearers, upon their oaths aforesaid, do declare and say that the said brig Jere Fowler, when she sailed from Philadelphia, was staunch and strong, well manned and apparalled, and in every respect well fitted for the voyage, and that they, together with others of the ship's company, used their utmost endeavors to preserve the said brig and to avoid the collision before mentioned, and also to preserve her cargo from all loss or damage, and

that no blame can attach to said master, his officers, or crew, in consequence of the loss aforesaid. Whereupon the said master hath protested, and I, the said notary, at his especial instance and request, do now publicly and solemnly protest, against all and every person and persons whom it may or doth concern, and against all and every thing had and met with as aforesaid, particularly against said brig Morning Light, her owners, officers, and crew, for and in consequence of said collision, whereby and by reason whereof the said brig Jere Fow-
85 ler and her cargo have been entirely and totally lost; and do declare that all losses, damages, costs, charges, and expenses that have happened, or may occur in consequence of said collision, are and ought to be borne by those to whom the same of right may appertain, the same having occurred as before mentioned and not by or through the insufficiency of said brig, or by the default or neglect of these appearers or others of the crew of said brig Jere Fowler.

Thus done and protested in the city of Portland, this ninth day of August, A. D. 1855.

In testimony whereof, these appearers have hereunto subscribed their names, and I, the said notary public, have also subscribed these presents, and
[SEAL.] at the same time have affixed my official seal at Portland, the day and year above mentioned.

NATHANIEL T. DURING,
Notary Public.

UNITED STATES OF AMERICA,
State of Maine, county of Cumberland, city of Portland:

86 I, the subscriber, a notary public duly appointed and legally qualified, and residing in Portland aforesaid, do hereby certify that the foregoing and annexed document is a true copy of the protest of master and crew of the Jere Fowler, of Lubec, as noted and extended before me, and as recorded in my notarial records.

In testimony of all which I, the said notary, have subscribed this and affixed my official seal at Portland, this twentieth day of March, in the year of our Lord one thousand eight hundred and fifty-six.

NATHANIEL T. DURING,
Notary Public.

Indorsed: Brig Jere Fowler. Copy protest.
Filed February 9, 1863.

87 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on the 17 day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE ALLIANCE INSURANCE COMPANY and others
v.
THE BRIG MORNING LIGHT, &c.

This cause coming on to be heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation having being had, it is now ordered, adjudged, and decreed, that the decree of the district court herein be, and the same is hereby, in all things affirmed, with cost to be taxed.

And it is further ordered, that unless an appeal be taken within the time limited and prescribed by the rules and practice of this court, that execution issue herein for the amount of the taxed costs.

S. NELSON.

88 Endorsed: U. S. Circuit Court. The Alliance Insurance Co. *et al. v.* the brig Morning Light, &c. Decree. Benedict, Burr & Benedict, lib't's proctors, 74 Wall st.

Filed Nov. 17, 1862.

89 U. S. circuit court, in the southern district of New York, in the second circuit.

THE ALLIANCE INSURANCE COMPANY, THE TRITON INSURACNE COMPANY, and THE NEPTUNE INSURANCE COMPANY, libellants and appellants,
against
The BRIG MORNING LIGHT, her tackle, apparel, &c., WILLIAM H. SMITH and others, claimants and appellants, and ELDRIDGE HUFF.

To the honorable the supreme court of the United States.

The appeal of the above-named libellants and appellants respectfully shows that on or about the 5th day of December, 1855, the libellants above named filed their libel in the district court of the United States against the brig Morning Light, her tackle, &c., in a cause civil and maritime, for the recovery
90 of damages alleged to have been sustained by them to the brig Jeremiah Fowler, by collision with the brig Morning Light, and that the said brig Morning Light was arrested upon process issued upon said libel, and was discharged upon the claimants filing their claim and entering into stipulations; and on the 10th day of January, 1856, the appellants filed an amended libel against said vessel and Eldridge Huff, and the claimants thereupon filed their answer to said libel, and such proceedings were had in said cause, that on the ninth day of April, 1859, a final decree was made, and pronounced therein by the said district court, wherein it was decreed that the said libel of the libellants be dismissed with costs.

That thereafter the libellants and appellants duly appealed from the said decree to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court,
91 and there tried anew, and such proceedings were had in the said circuit court, and that afterwards on the 17 day of November, 1862, the said circuit court made a final decree in the said cause, whereby it was decreed that the decree of the district court be affirmed in all things with costs.

And these appellants are advised, and insist that the said decree of the said circuit court is erroneous, as the libellants are entitled to recover in this cause.

Wherefore these appellants appeal from the whole of the said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings, in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court would proceed to hear the said cause anew, and that the said
92 decree of the circuit court may be reversed with costs, or that such other decree made as to the said supreme court shall seem just.

BENEDICT, BURR & BENEDICT,
App'l'ts' Procts.

Endorsed: U. S. circuit court. The Alliance Insurance Company *et al. v.* the Brig Morning Light, &c. Appeal. Benedict, Burr & Benedict, app'l'ts' proctors.

Filed Nov. 26, 1862.

93 Circuit court of the United States of America, for the southern district of New York, in the second circuit.

THE ALLIANCE INSURANCE COMPANY *et al.*, libel'ts & app'l'ts,
vs.
THE BRIG MORNING LIGHT, her tackle, &c., *et al.*, WILLIAM H. SMITH *et al.*, resp'd'ts and appellees.
} Bond for costs.

Know all men by these present, that we, Henry Crocker, are held and firmly bound unto the above-named claimants and appellees in the sum of two hundred and fifty dollars, to be paid to the said claimants and appellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the —— day of —— in the year of our Lord one thousand eight hundred and sixty-two.

Whereas the above-named libellants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York, now, therefore, the condition of this obligation is such, that if the above-named libellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make the appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY H. CROCKER. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 25 day of Nov., 1862, before me.

[SEAL.]

WM. D. JONES,
Notary Public, 74 *Wall st.*

94 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry H. Crocker, being duly sworn, doth depose and say, that he resides at No. 95 east 19th street, New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

HENRY H. CROCKER.

Sworn to this 25 day of Nov., A. D. 1862, before me,

WM. D. JONES,
Notary Public, 74 *Wall st.*

Filed this 26 day of Nov., 1862.

95 By the honorable Samuel Nelson, judge of the circuit court of the United States for the southern district of New York, in the second circuit.

To W. H. Smith, and others:

Whereas The Alliance Insurance Company, The Triton Insurance Company, and The Neptune Insurance Company, have lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in the favor of the claimants of the brig Morning Light against the libellants, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington,

on the 27th day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 26th day of Nov., 1862,
96 and of the independence of the United States the eighty-seventh.

S. NELSON.

Endorsed: U. S. circuit court. The Alliance Insurance Company *et al. v.* the Brig Morning Light *et al.* Citation. Benedict, Burr & Benedict, app'l'ts' proctor.

We admit personal service of the within citation on the claimants, Nov. 26, '62.

R. D. & D.
Proct's for Cl'm'ts.

Filed Dec. 19, 1862.

Supreme Court

OF THE UNITED STATES.

THE ALLIANCE MUTUAL INSURANCE COMPANY, *et al.*

vs.

THE BRIG, "MORNING LIGHT."

Points and Brief for Libellant.

E. C. BENEDICT, *Advocate.*

This is a cause of collision. The libel was filed in the District Court for the Southern District of New-York, December 5th, 1855.—*Fol.* 2. An amended libel was filed January 11th, 1856.—*Fol.* 18.

The vessel was appraised at the value of $9,750, and delivered on stipulation to pay the decree.—*Fol.* 9.

The hearing in the District Court commenced on the 4th March, 1859—*Fol.* 26, and that Court made a decree dismissing the libel, April 9, 1859.—*Fol.* 70.

The libellants appealed to the Circuit Court, April 19, 1859.—*Fol.* 72 and 77.

The appeal was heard May 20, 1862, and on the 17th day of November, 1862, the Circuit Court affirmed the decree of the District Court.—*Fol.* 87.

The libellants appealed to this Court, November 26, 1862.

Preliminary Statement.

On the 6th of August, 1855, the brigs "Morning Light" and "Jerry Fowler," were bound eastward, beating into the Vineyard Sound, close-hauled, wind E. by N.

The Jerry Fowler was ahead, the Morning Light following her.

At nightfall, sundown, the Morning Light saw the Jerry Fowler ahead of her five or six miles, and studied her course, through a glass, for two hours—six to eight o'clock, the dog-watch—(*Fol.* 37,) and thus knew she was bound the same way, and must be in the vicinity all night.

In the night the weather became very thick, rainy and foggy, but at one o'clock the fog began to clear up, and at four o'clock in the morning it was partly cleared up and fairer; and although the weather was still thick and rainy (*Fol.* 46), the light-house at Gay Head could be seen several miles. A vessel could be easily seen half to three-quarters of a mile.—*Fol.* 45.

The captain of the Jerry Fowler, after having run four hours directly towards the dangerous ledge of rocks known as Sow and Pigs (*Fol.* 27), thought he ought to go no further, and determined to tack ship. Those dangerous reefs require a birth of four or five miles (*Fol.* 27) in the night and in bad weather.

His rigging was wet, stiff and difficult to handle, and he tacked slowly.

In the midst of his tacking, after putting down his helm, while his vessel was up in the wind, and was dead in the water (*Fols.* 44, 53), the Morning Light came in sight at a distance of about half a mile (*Fol.* 27) then on his starboard side, coming directly towards him.

He hailed, and endeavored to make himself seen or heard, but the Morning Light, having no proper look-out, made no change in her direction, and came upon the Jerry Fowler, striking her, just forward of the main rigging, on the starboard side, and sunk her.

The crew of the Jerry Fowler went on board of the Morning Light, and were carried to Portland, Maine.

The Court below held that the case was one of inevitable accident.

Before considering the facts, the attention of the Court is invited to some general rules applicable to the case.

I.—"A vessel ahead has the *sea-way* before her, and is entitled to hold her position, and, consequently, the vessel coming up must keep out of the way."

23 Howard, 453, Whitridge *et al. vs.* Dill *et al.*

"The nautical usage for close-hauled vessels is, for the head vessel to tack without regard to the other, and the rear one must watch the movements of the one ahead, and govern herself accordingly."

Larkin, 46; Winslow, 45.

II.—"Inevitable accident, as applied to cases of this description, must be understood to mean a collision which occurs when both parties have endeavored, by every means in their power, with due care and caution, and a proper display of nautical skill, to prevent the occurrence of the accident."

24 Howard, 313, Union Steamship Co., *vs.* N. Y. and Va. Steamship Co., and cases cited.

III.—"The law requires of a colliding vessel that she shall prove, not only that she has a competent look-out, stationed at the proper place, but also that the look-out was vigilantly performing his duty."

21 Howard, 192; The brig James Gray, *vs.* ship John Fraser, *et al.*

It is not enough that one, or even two, men may be told to look out, and be occasionally looking out, while they are here and there, about ship's duty, or for any reason, absent from their posts.

23 Howard, 452-3, Whitridge, *et al.*, *vs.* Dill, *et al.*
17 How., 177, The Sch. Catharine.

This necessity of a look-out, dictated as well by humanity as by nautical law, is inflexible.

No master can be permitted to say that he was without fault, if he has neglected this precautionary duty of having a proper, active, vigilant look-out—only the more necessary if it be in the night time, if the weather be thick and the darkness very great and the negligence only the more inexcusable if another vessel be known to be in the vicinity, close-hauled, and liable to the changes and embarrassments incident to beating against the wind.

IV.—No Master can be received to say that he run down a vessel by inevitable accident if he have failed to keep a proper look-out. He can never say that a competent vigilant man might not have caught a glimpse of the other vessel's light through the dissolving fog, or of her sails, or her hull in the twilight of the morning when the weather so often changes, and the fog, and the mist, and the haze begin to retreat before the coming sun, or might not have heard some noise, some loud order, some run of the rigging, some hail, which, directing his attention, might have prevented the disaster.

V.—There can be no inevitable accident at sea where there is no irresistible action of the elements or natural objects—an unknown current, a hidden rock or shoal, a sudden squall, a hurricane, a flash of lightning, may cause an inevitable accident, but a quiet sea and gentle breezes, with careful navigation, never. Darkness, and fog, and rain, have no power. If it be so dark that nothing can be seen, then lie to or cast anchor till your blindness is removed. If things are seen with difficulty, have careful and competent men, whose sole duty it is to look out, and be careful to shorten sail and creep along no faster than you can go with safety to others.

VI.—The answer does not set up the defence of inevitable accident. The libel alleges that the collision was caused by the fault of the "Morning Light," in running at a rapid rate without a look-out; in not either tacking when the vessel ahead tacked or keeping off under her stern so as to avoid her.

The answer denies the facts charged—alleges that the look-out saw the vessel ahead, at once gave the order to hard-up, that the order was instantly obeyed, (*fol.* 46,) and that the "*want of corresponding efforts*" on the Jerry Fowler caused the collision. Both parties, actual spectators of the collision, insist that it was caused by culpable human negligence

Neither do the claimants' witnesses attempt to prove a case of inevitable accident. All the witnesses agree, that the collision was the result of culpable negligence.

The decree must be *secundum allegata et probata*, that it was the fault of one, or both.

McKinley *et al. vs.* Morrish, *et al.*, 21 Howard, 346.

VII.—The two vessels were not approaching each other, but the Morning Light was following the Jerry Fowler, and the Jerry Fowler was at the time dead in the water and helpless.

The Jerry Fowler was ahead, and entitled to the sea way, and the Morning Light following after, was bound to avoid her; yet she ran into her and sunk her. The burden is, therefore, on the Morning Light, to prove that the collision was not caused by her fault.

The Jerry Fowler was helpless, dead in the water, and the Morning Light was bound to avoid her, and for this reason also, the presumptions are against the Morning Light, and throw upon her the burden of exculpation.

Freeman, the mate of the Morning Light, says, "It appeared, when we first made the vessel, that she was lying dead in the water,"—*fol.* 53; "If the other vessel had been going ahead,"—*ibid* 54.

Winslow, second mate of the Jerry Fowler, says the same thing—"The Jerry Fowler was then lying dead in the water,"—*fol.* 44. Other witnesses are to the same effect.

The Morning Light knew the Jerry Fowler must be in that vicinity and ahead of her and liable to tack. She had seen her and studied her movements with a glass two hours, at night-fall, on the same tack and course with them. *Hough, captain of the Morning Light, fol.* 37, *and Jackson, seaman, fol.* 32, and from the answer, *fol.* 25, it appears that they had seen her often, during the night. They say, that during the entire night she was badly managed and had been several times aback. *Answer fol.* 25.

On these grounds the Morning Light is chargeable with negligence.

VIII.—The evidence is also conclusive, that the Morning Light was running with unabated speed, without a proper look-out.

This is shown by a careful examination of the testimony of Freeman, the mate, and Jackson, the seaman, on the Morning Light—there is no conflicting testimony.

(*a*) The mate says, "we were under full sail."—*Freeman*, 56. "We were going about five knots, and a vessel jammed by the wind going through the water five knots, is knocking the water pretty fast."—*Freeman*, 59.

"The weather, during the night, was a thick fog and rainy. The rain came in fog showers."—*Freeman*, 51. This shows a recklessness which may well be remembered in considering the question of look-out, as may also the fact that they made no hail. —*Freeman*, 58.

(*b*) The answer alleges that there was a man, whose whole business was, to look out, but does not name him, nor does the testimony show any such person. Jackson, a seaman, and Freeman, the mate, were the only persons on deck, except Foster, who was at the wheel. The mate says, *fol.* 56, "I came on deck at 12 o'clock; Wilmot Jackson and George Foster came on deck at the same time; they completed my watch; the rest went below." And again, *fol.* 57, "No one was on the deck of our vessel at this time but myself, Foster and Jackson. George Foster was at the wheel from 2 to 4 o'clock," *fol.* 57.

The mate was officer of the deck this watch, he could not be the look-out.—*Fol.* 34.

(*c*) Jackson was *aft*, by *the mainmast*, on the *leeward side*. He had been pumping several minutes, and had been at the binnacle behind the house, clear aft, to look at his watch, and was in several other places, all within a few minutes of the collision. He saw nothing and heard nothing till the mate gave the alarm. He *thought* something was the matter when he heard the order of the mate. —*Fol.* 34.

He says, *fol.* 31, "I was on look-out with the first mate;" again, "directly before the collision, was standing eight or ten feet before the mainmast, looking out for vessels to leeward." This was "two minutes before the collision; prior to that, stood forward on look-out with first mate." "Before that, was aft four minutes, pumping, and then went along back and looked at the watch to see if time was up, (33.) Then returned forward to mate (32), at mainmast (34); mate was standing on starboard side, abaft the mainmast, looking out. Witness stood on larboard side near rail (33); attention was *first* called by mate singing out 'hard up the wheel!' (32); witness jumped forward to see what the matter was; mate ordered to let go the main-sheet, which witness ran back to do; was on the deck load; did not see mate at that moment; had not seen him for five minutes; was then (five minutes before) alongside of him; witness attempted to go forward, when mate ordered 'let go fore-sheet;' witness let sheet go," (31.) "Witness then went to the lee braces, which were aft by the main chains," (34.) "Mate then ordered, 'call all hands;' witness did call them, standing aft of the lee braces; they were ten feet from the fore braces further forward; witness passed from one to the other as quick as he could run." (32.)

It cannot be pretended, that he was such a look-out as the law requires, or as the answer sets up.

(*d*) Freeman, the mate, pretends to have been on look-out, and he was still less a proper look-out than Jackson.

He was the officer of the deck, and had the whole ship's duty on his mind (*fol.* 34). Jackson and myself were both on the look-out just before the collision (*fol.* 51). I was standing forward, on the deck-load, on the starboard side, just by the fore-mast (51). I did not stand in the same place till she struck; I stepped forward, to the forward part of the deck-load, so that I could be forward of the mast 58), [So that, before, he was behind the mast and the sail,] for I expected she would knock everything all away; I was afraid she might carry away the spars; I had sung out to the man, before I stepped forward, and after I sung out and before I stepped forward I gave orders to clear away the tacks and sheets; Jackson had called all hands then (58); I cleared away the tack and bowline myself; as soon as I cleared the tack, I went aft; I did not hail; I heard no hail (58).

Again: I was forward, on the look-out, at the collision, and for some fifteen or twenty minutes before we could see her (53); I had for a light a signal lantern and a large globe lantern, giving a good white light (51); the signal lantern had got blown out, and after I took the deck I had it lighted; I lighted it myself, and I lit it in the galley, and I then went on the topgallant forecastle with it, and stood there awhile, with it in my hand (57); I stood there the biggest part of the watch. [Looking out with a bright light in his hand!]

I was aft three or four times during the watch, to see about trimming the sails, and see how she was steering (57); Jackson stood on the forecastle while I was there, but not all the time; I sent him *to pump the brig out* awhile before the collision; perhaps I had been there fifteen minutes; when I went there I called Jackson to go and *try the pump*, and he did so (57); he was standing, at the time I saw the vessel, by the main rigging, on the larboard side; we had not spoken to each other after he took that position (58); I looked at the compass to see how we were steering, and the vessel was steering by compass, when I looked, N. by E.; I told the man at the wheel to watch her, and keep her snug to the wind; I was not aft any length of time; this was the last time I was aft before the collision; I then went forward, as I told you before, to the forward part of the deck-load, and staid there till I made the sail of the Jerry Fowler. (60.)

The Morning Light had her foresail set at time of collision; had her foresail close down to her deck-load, and six or eight inches above the rail, and when set, ran anglingly across the topgallant forecastle, from one side of the vessel to the other; a man standing at the foremast on the Morning Light, could not see the Jerry Fowler forward without looking under bottom of the foresail. That is not a proper place for a lookout. He could not see ahead, nor to leeward, except right across the vessel. Lookout on Jerry Fowler was forward of that foresail." Winslow, 45.

They do not pretend that they could see, except under the foresail, which was 4½ feet from deck. Jackson, 48–9.

The deck-load was about level with the main-rail. Jackson, 31; Freeman, 51.

The testimony of Jackson & Freeman, taken together, shows, that during the five or six minutes before the collision, both—sometimes one and sometimes both—were sometimes on the top-gallant forecastle, sometimes at the wheel, sometimes at the binnacle, sometimes at the foremast, sometimes at the mainmast, sometimes on the starboard side, sometimes on the larboard side, sometimes at the tacks, sometimes at the braces, sometimes at the sheets, sometimes at the bowline, now jumping forward and now running back, now by the main-rigging, and now by the fore-braces, with never any person on the bow, and at times *all persons* aft the house and always behind the foresail on the deck-load. This is the grossest negligence.

Everything should be presumed against such carelessness, and the burden is on her to show why she did not avoid the Jerry Fowler.

1 Parsons Maritime Law, 191.
1 Newberry 492, The Anglo-Norman.
23 Howard 303, Haney *vs.* The Baltimore S. Packet Company.

IX.—Darkness is no excuse for want of look-out, but a reason for greater carefulness. If a look-out was of any use at all, they should have had not only one but many. If it was too dark for a look-out to see at all, then they should not have been running, certainly not "going through the water five knots an hour, jammed by the wind."—*Freeman*, 54.

The darkness was not extreme, and the finding of Judge Betts that the protest so states it, is incorrect. The *protest states no such thing.* The night was thick and rainy, with fog showers.

(*a*) All the witnesses for the Jerry Fowler say they could and did see the Morning Light for half a mile. *They saw the lights—Lovejoy,* 27–29; *Winslow,* 45; after the accident they pulled off in the small boat, although the Morning Light was then more than two lengths off.

(*b*) The captain of the Morning Light admits that he could see the Morning Light two lengths (*fol.* 100), and he, as well as *every other witness* who testifies for the claimants, had just come *from a light,* which explains why it seemed so dark to them.

(*c*) The fair weight of testimony is, that it had been dark, was fairer, but *thick and rainy,* as the protest says. It was 4 A.M., in *August,* in the morning twilight.

(*d*) The master should have been on deck in such weather, and there should have been two lookouts with no other duty.

X.—The Morning Light was guilty of gross fault, after she did see the Jerry Fowler, *in letting her foresheet* run,

This counteracted the effect of the wheel, so that she made no change of course.—*Larkin*, 47.

From thirty to forty feet would have cleared the Jerry Fowler. The Jerry Fowler was, on their own showing, two lengths off and more when the wheel was put up (*fol.* 39.) In two lengths she could, if properly managed, avoid any vessel (*fol.* 47, *Larkin.*)

The burden was on the Morning Light, to prove that her light was hung again in the rigging after it was re-lighted. There is no such proof. No witness on the Morning Light says he hung it up again. The statement of Jackson is quite uncertain, as to the time and place when he saw it. None of the men on the Fowler saw any light. Saw no light on Morning Light; should have seen it if one was there. Winslow, 44.

Did not see any light on her. Lovejoy, 28.

I saw no light on the other vessel; if there had been a light on her I should have seen it. Schneider, 62.

XI.—The theory that the two vessels were running upon opposite tacks, and the Jerry Fowler was on the larboard tack, and, therefore bound to give way, finds no countenance in the testimony. No such idea is even hinted in the answer. No witness pretends that such was the fact. It depends wholly upon a perversion of the words of the protest which is tortured into an admission that before the Morning Light was seen she was sailing south-east.

(*a*) The libellants are not called on to reply to a theory not pleaded or sworn to, and not alluded to by the Court below.

(*b*) The protest contains no such admission as is now pretended.

(*c*) The doubtful and not clearly intelligible words of a protest drawn by a notary, ignorant of the facts, should not be so construed as to contradict the express statements of witnesses given in Court, and under oath, and subject to cross-examination.

See Dr. Lushington—The Osmanli. 7 Notes of Cases, 510.

The same is true as to statements said to have been made by members of the crew after the collision. 23 *Howard;* 308 *Haney* vs. *the Baltimore Steam Packet Co.*

XII.—No fault is proved on the Jerry Fowler; she was the *leading vessel* and had the right of way—she had the right and it was her duty to tack when in her judgment it was necessary whether she was near to the "Sow and Pigs" or not, but she was near, the weather being considered. She saw the Morning Light as soon as she hove in sight, and at once hailed her. She had all hands on deck and a look-out before the foresail. She was dead in the water and could do nothing more than she did, "continue to try to make them see and hear."

Jerry Fowler had a light—largest kind of signal lantern hanging on the forestay well trimmed, and burning till it sunk in the water.—*Lovejoy*, 28; *Schneider*, 63.

Had also a lookout—a proper man stationed on

top-gallant forecastle—that was proper station.—*Winslow*, 43.

Lookout on Jerry Fowler was forward of the foresail —*Winslow*, 45—and they actually saw the Morning Light and hailed her in abundant time as loud as they could.—*Lovejoy*, 27; *Winslow*, 44; *Schneider*, 62 *and* 67.

XIII.—These questions of nautical duty—mixed questions of law and fact and sometimes of fact alone—are among the most important questions which come before this Court. They have a national and international importance. At common law we begin by finding the facts by the concurrent opinion of twelve men—in Admiralty we are allowed but the opinion of one isolated judge and then another, before we come to this Court, where the cause is heard anew, and submitted to the mutual consultation and concurrent decision of a numerous and enlightened body of judges, versed in such questions of fact as well as in the law applicable to them. It would be strange if, under such circumstances, this Court should decline in admiralty cases, as has sometimes been contended, to review with care the questions of fact upon which the right depends as much as it does upon questions of law. In Courts of Admiralty of the last resort, the questions of fact are fully examined and if justice demands it, the most solemn adjudications are reversed on appeal, on mere questions of fact. The peculiar functions and practice of the Admiralty Courts should never be lost sight of.

In this Court: The schooner Catharine, 17 How. 170; Crocket *vs.* the Isaac Newton, 18 How., 581; Sturgis *vs.* The R. L. Mabey, 21 How., 451.

In the Privy Council in England: The Fynoord, Swabey, 374; The Dumfries, Swabey, 125; The Telegraph, 1 Spinks, 427, and numerous other cases in both countries.

The decree should be for the libellants, with a reference to ascertain the damages.

E. C. BENEDICT,
For Libellants and Appellants.

Mr. Donohue's

U. S. Supreme Court.

THE BRIG "MORNING LIGHT,"
Appellees,
advs.
THE ALLIANCE MUTUAL INSURANCE COMPANY,
Appellants.

This was a collision case arising on the following facts: The two vessels were beating to windward, and the night thick and rainy. The Morning Light was on the starboard tack, close hauled, and the Jerry Fowler, as we contend, went about while unprepared, and without proper care, and while on the port tack came into collision with us.

FIRST POINT.—If this collision occurred under any of the following circumstances, we are clearly not liable:

1. Inevitable accident.

2. While they were on the port and we on the starboard tack.

3. By the fault of the Jerry Fowler's crew.

Under the first. It is submitted that if it appears that the night was dark, foggy, and rainy, as testified to on our side; that we had a watch set; that a vessel could have been seen but a short distance, and not in time to clear; then a case of inevitable accident is made out, so far as we are concerned, no matter how careful the other side were. Now, are our facts made out? We say they are:

1. The night at this time was foggy, rainy, and dark; all our witnesses swear to this; their protest, which was sworn to by them, shows it, and the only contradiction is that of their captain and second mate, now, after the lapse of three years, contradicted by their protest. Which statement is best, now or three years ago?

2. Had we a watch set? Our crew all show it, and where it was, and that it was the proper place. The only contradiction, again, is that of the other crew and experts, who are, as to one class, contradicted by their own sworn protest, and also by the fact that they never tried to see whether it was or not.

3. As to the proximity of the vessels when they could see. Our witnesses all say that they were so near, we could do nothing. Their witnesses, though they swear they saw us a long distance off, all swore that they commenced hallooing the minute they saw us, and expected a collision from that time. If that does not, even on their own showing, make out such a proximity as we claim, it is hard to make it out. Of course they desire to put us in fault, and put us as far off as possible; but they swear when they saw us they

expected a collision, and also show they did expect it by all fore and aft commencing to halloo.

It is therefore evident, not from the conclusions sworn to, but the facts, that the loss, so far as we were concerned, arose from inevitable accident. But were they not on the port tack?

If testimony means anything, they were when they saw us. This is shown,

I. By their protest, that shows the story they told immediately on coming ashore; they were on their starboard at 4, they tacked to the southward and eastward. This was their port tack, and so were on this evidently from the protest when they first saw us.

II. This is confirmed by what the protest further says, they immediately put the wheel down when they saw us. If they had their wheel down why put it down then.

III. It is further confirmed by the deposition of Snyder, the cook, that the order to hard-down was given and the vessel a-back before he came on deck; this would be a grossly unseamanlike move if done to tack, but just what would happen in a sudden emergency.

In this aspect it again appears on both sides that we could do nothing; first, from our testimony that we could not see them until too late, and secondly, by the fact that when they saw us a collision was either unavoidable or probable, and that we could not help it.

3. Libellants' vessel was in fault. In examining this point the court will see that so far as the facts to prove their acts, positive, &c., are concerned, they are the swearing parties of course, and what they really did and what their positions were, are only to be obtained from a careful examination of all their statements.

Now their testimony on the stand and protest are exactly at variance.

I. In stating the weather to be without rain or fog at 4 o'clock, the protest says one way, the evidence three years afterwards, the other.

II. The tack they were on, the protest says one way, the evidence says another.

III. What was done, and why, on this again the protest and evidence were exactly at variance.

These points are dependent in some measure on the way we view the evidence, we say.

Second Point.—The evidence conclusively makes out each of the facts we rely on.

1. The fog, rain, and darkness of the night.

This is fixed conclusively by their protest made at the time. It is made out by the statement of all our witnesses.

It is made out by the fact they now admit

that as soon as they saw us a collision was imminent, so much so they all began to sing out.

2. That they were either on the port tack, which the protest would prove, and so bound to get out of our way, or that they undertook to go about when the men were not at their stations.

This Snyder makes out: he shows his position when the order was given and where he should have been. Indeed, his deposition accords with the theory of their being on the larboard tack.

3. They were (if not on their port tack) guilty of gross negligence in keeping no lookout. The second mate of the Jerry Fowler swears he set the watch at two A. M., and the watch was up at four, and the other watch was called, but he set none. He and the captain also swear that three men on the Jerry Fowler were at the braces on one side, second mate at the other; mate and cook attending the fore-sheet, and the captain and one man at the wheel. This makes the entire crew and a lookout wanting.

4. They went about in an unseamanlike manner, in going about right under our bows. This Captain Lovejoy's admission shows.

The experts called for us show it to be im proper.

In going about and getting aback before the crew were at stations, see Snyder.

The fact was, the evidence shows the crew to be entirely disorganized

5. The fact that Captain Lovejoy had to be pressed to come to court, agrees with his admissions at time of disaster. His refusal to deny positively such admissions, shows his admissions of the accident were true.

THIRD POINT.—The case presents no ground for apportionment against us. The fault leading to the collision is theirs, and in keeping our course and following well-known rules we did right. The Supreme Court of the United States has, as we understand it, fixed this as matter of law, in Sturges against the R. L. Maybe, at this term.

FOURTH POINT.—We were guilty of no neglect in any respect, and were on a privileged tack; had the right to keep it against all the world; at best they were going about in an unseamanlike manner on to the unprivileged tack.

1. We had a watch set. This all our crew swear to, and of course it cannot be contradicted by them.
   That he was set at a proper place is shown (*a*) from his statement, and that of the experts (*b*), that he could see, he and all those familiar from standing watch, there show.

2. We could not clear them when we saw them; all our witnesses swore to this.
   Their protest makes the night so as to confirm our statement of being unable to see.

Although they volunteer the statement we were half a mile off when they saw us, yet they all swore for libellant that all commenced singing out as soon as they saw us. That story might do to tell to children, but is too poor a one for even willing dispositions to swallow, and shows that they did at the time that which betokened an imminent sense of danger, and now have these prepared in a different mould to suit circumstances.

Fifth Point.—The owners and master of this vessel never thought they had a claim against us, and all left the place where they belonged to have them come here after the witnesses had scattered, and a new story could be made up to bring a suit, and then the sharp wit of the insurance company had to find out their rights.

Sixth Point.—The party libellant has no right to bring the suit. They insured against just this loss; they allege in their libel no assignment of the loss to them, and we submit no man make himself our creditor without our assent; without such assignment we urge this point, distinctly and in good faith, and wish to be distinctly understood as in no way waiving it in this court.

THE ALLIANCE INSURANCE COMPANY,

vs.

THE BRIG "MORNING LIGHT."

Appeal in Admiralty, Oct. 7. 1862.

NELSON, C. J.

The collision in this case occurred between the Brig Morning Light and the Brig Jerry Fowler, on the morning of the 6th of August, 1855. Both vessels were going eastward, and were in Block Island channel, beating into Vinyard sound, the Fowler in advance. Both had their starboard tacks on board. The wind easterly, about north by east. The vessels had been beating into the sound most of the night. Between three and four o'clock in the morning, the Fowler, having run out her tack, called all hands on deck to change her course. For this purpose her head was thrown into the wind, and while in that position, with sails aback, and under no headway, she was struck by the Morning Light on her starboard quarter, a little forward of the main rigging, and sunk.

The night was dark and rainy, accompanied with fog, and the weight of the evidence was pretty clear that the Fowler could not be seen, even with proper lookouts on the Morning Light, in time to have avoided the disaster. Both vessels appear to have been well manned, and navigated with accustomed care, and had proper lights. Of course, the hands on board the respective vessels, as usual, impute faults to each other; but each maintain the due and skilful navigation of their own vessel.

Mutual admissions of fault also are proved, by witnesses from the respective vessels, to which we pay very little credit.

The state of the weather during the night, and at the time of the collision, is generally agreed by the witnesses on both vessels, though those on the Jerry Fowler attempt to modify somewhat the darkness.

The second mate of the Fowler, Winslow, says, at 12 o'clock it was dark, foggy, and rainy, and at 1 o'clock fog cleared away, rain continued until 3 or 4 o'clock, when he called watch at 4 o'clock could see good distance on water—three quarters of a mile, he supposes; could not fix the distance, but a good way off.

The master, Lovejoy, says, it had been raining the forepart of the night, but was partly cleared up at collision.

The concurrent proof on the part of the witnesses from the Morning Light is, that the weather during the night was thick fog and rainy, rain came on fog showers.

The court below came to the conclusion that the disaster was the result of inevitable accident, and dismissed the libel, we concur in this conclusion.

Decree affirmed.

U. S. DISTRICT COURT.

THE ALLIANCE INSURANCE COMPANY, and other Insurance Companies,

vs.

THE BRIG MORNING LIGHT.

The grounds of action and defence in this suit set forth in the pleadings appear to be these—

About the 6th of August, 1855, the brigs, the *Jerry Fowler* and the *Morning Light*, in a dark and rainy night, were pursuing a voyage through Buzzard's Bay and Martha's Vineyard, eastward, with the wind from the northeast, the Jerry Fowler being the head vessel, and the Morning Light in her rear, both vessels running on their starboard tacks, on about a common course, and at 4 o'clock in the morning of that day a collision occurred between them, the stem or bows of the Morning Light breaking through the starboard [illegible] of the Jerry Fowler, near her main rigging, and the latter vessel, with her cargo of coal, was, by the collision, sunk and became with her cargo a total loss.

The amount of the policies was satisfied by the libellants, who had connectedly underwritten $13,000 upon the Jerry Fowler, in stated proportions, and they unitedly prosecute this action to recover back from the Morning Light the sums so paid.

The Jerry Fowler, at the time of the collision was either in the act of completing her tack, or had just come round from the larboard to the starboard tack, and come under way on the last tack; the evidence as to her partic-

ular position when the two vessels came in contact not being exactly concurrent upon that fact on either side.

The Jerry Fowler was tacked, not because of any actual necessity from the nearness of shoals, or dangerous impediments, but because her master thought she had approached so near the Cutterhunk shoals as to render it proper in the darkness of the night to change her course. It proved she was not in reality within five or six miles of the supposed reefs.

The witnesses on each vessel assert a light was suspended in a place for being easily seen from the other, and on each side it is asserted that neither discovered any light exhibited upon the other vessel. The witnesses on the Morning Light testify to a darkness so extreme as to disable them discerning objects distant less than her length off—some on the Jerry Fowler state they saw the other vessel coming upon them half a mile distant. But in their sworn protest, made directly after the accident, they represent the darkness to have been so extreme at the time of the collision as to prevent their seeing objects beyond a slight distance off. This collision occurred the beginning of August, 1855. The original libel was filed December 5, thereafter, and the amended libel to which the answer was interposed, was filed January 11, 1856. The answer was filed April 3, 1856, and the hearing was in March, 1859. The protest signed and attested to by the crew of the Jerry Fowler was made at Portland on the arrival at that port of the Morning Light with those men, within three or four days after the collision, and the representation made by those men at that time of the thickness and darkness of the weather corresponds essentially with the evidence of the crew of the Morning Light on the final hearing.

The special statements of the libel and answer are not noticed further than the denial by the answer, that these libellants are competent parties to prosecute the action.

Held by the Court: That the question need not on this occasion be considered and decided, whether underwriters who satisfy a policy against losses by perils of the sea, can, if the loss is occasioned by a wrongful collision against the insured vessel by another vessel, being a peril of the sea, maintain an action in their own names for the recovery back of the money so paid by them, on the ground that the collision was inexcusable and culpable; the facts in evidence before the Court not establishing in this instance, a case of neglect or misfeasance on the part of the Morning Light. That the evidence shows a case of inevitable accident between the two vessels, or if there was at the time of the collision between the two vessels, any culpable inattention or misconduct which conduced to produce the collision, the fault therein was a common one to both, arising from (the obscure state of the weather) the want of extreme vigilance and precaution in making further signals on board both vessels or even coming to anchor, and the uncertainty from that cause to each vessel, what was the proper and prudent course for either to pursue in respect to the other vessel or its own individual navigation. That if it was imprudent and hazardous with the Morning Light, having knowledge that the Jerry Fowler was probably ahead in the direction she was steering, to continue a course which may have been concurrent in both vessels, during the night, because the darkness had then become so dense and continuous as to prevent her position being seen by the vessel astern of her, it was no less faulty in the Jerry Fowler to put about in that state of darkness, when not impelled to depart from her previous course by any necessity of navigation, when such evolution might place and leave her in a helpless condition, in the probable path of the approaching vessel, until the latter should be so near her before she could be seen to disable either one from escaping a collision. That upon the proofs no ne-

cessity is shown for the Jerry Fowler to make a tack for her own safety, or as an act of prudence or good seamanship, a distance of five or six miles off the reefs she intended to avoid, and that no higher necessity is shown for the Morning Light to come to in that state of the weather, than for the Jerry Fowler to have done so also. That comparing the testimony given by the crew of the Morning Light with the statement in the protest made directly after the occurrence, by the crew of the Jerry Fowler, the fair weight of evidence is, that all hands aboard each vessel were bewildered and confused by finding themselves in sudden and dangerous proximity to each other, in a thick fog, and that the collision consequent thereto was the result of accident common and unavoidable to both. Each party under the circumstances is accordingly bound to bear his own loss.

Libel dismissed.